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10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14 **JESSE M. PLAZA,**

Petitioner,

15  
16 v.

17 **BEN CURRY, Warden,**

18  
19 Respondent.

C08-1589 JF

**ANSWER TO PETITION FOR  
WRIT OF HABEAS CORPUS;  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

Judge: The Honorable  
Jeremy Fogel

20 As an Answer to the Petition for Writ of Habeas Corpus filed by inmate Jesse M. Plaza,  
21 Respondent, admits, alleges, and denies that:

22 1. Plaza is in the lawful custody of the California Department of Corrections and  
23 Rehabilitation following his 1991 conviction for first degree murder. (Pet. at i.) Plaza is serving  
24 a sentence of twenty-five years to life in prison. (*Id.*)

25 2. In 2007, Plaza filed a petition for writ of habeas corpus in Los Angeles County  
26 Superior Court, alleging that the Board of Parole Hearings' 2006 decision denying him parole  
27 violated his due process rights. (Ex. A, Super. Ct. Pet.; Ex. B, Super. Ct. Order.) Plaza also  
28 alleged that the Board applied the statutory parole criteria in an arbitrary and capricious manner,

1 and that he has a reasonable expectation of release based on Penal Code section 3041,  
2 subdivision (a). The superior court denied the petition, finding that there was some evidence to  
3 support the Board's finding that Plaza's offense was carried out in a calculated and dispassionate  
4 manner, and that the motive for the crime was trivial in relation to the offense. (Ex. B at 1-2.)

5 3. Plaza then raised the same claims in petitions to the California Court of Appeal and the  
6 California Supreme Court. (Ex. C, Ct. App. Pet.; Ex. D, Ct. App. Order; Ex. E, Sup. Ct. Pet; Ex.  
7 F, Sup. Ct. Order.) Both petitions were summarily denied. (Ex. D; Ex. F.)

8 4. Respondent admits that Plaza exhausted his state court remedies regarding his claims  
9 that the Board's 2006 decision violated his due process rights, that the Board applied the  
10 statutory parole criteria in an arbitrary and capricious manner, and that he has a reasonable  
11 expectation of release based on Penal Code section 3041, subdivision (a). Respondent denies  
12 that Plaza exhausted his state court remedies regarding his claim that the Board violated his right  
13 to equal protection. 28 U.S.C. § 2254(b)(1)(A); *see O'Sullivan v. Boerckel*, 526 U.S. 838, 844  
14 (1999) (a state inmate must properly exhaust available state court remedies before a federal court  
15 may consider granting habeas corpus relief). Respondent denies that Plaza has exhausted his  
16 claims to the extent they are interpreted more broadly to encompass any systematic issues beyond  
17 this claim.

18 5. Respondent admits that the Petition is timely under 28 U.S.C. § 2244(d)(1).  
19 Respondent admits that the Petition is not subject to any other procedural bar.

20 6. Respondent denies that Plaza is entitled to federal habeas relief under 28 U.S.C. § 2254  
21 because the state court decisions were not contrary to, or an unreasonable application of clearly  
22 established federal law as determined by the United States Supreme Court, or based on an  
23 unreasonable determination of the facts.

24 7. Respondent denies that Plaza has a federally protected liberty interest in parole and,  
25 therefore, alleges that he has not stated a federal question invoking this court's jurisdiction.  
26 The Supreme Court has not clarified the methodology for determining whether a state has created  
27 a federally protected liberty interest in parole. *See Greenholtz v. Inmates of Neb. Penal & Corr.*  
28 *Complex*, 442 U.S. 1, 12 (1979) (liberty interest in conditional parole release date created by

1 unique structure and language of state parole statute); *Sandin v. Connor*, 515 U.S. 472, 484  
 2 (1995) (federal liberty interest in correctional setting created only when issue creates an “atypical  
 3 or significant hardship” compared with ordinary prison life); *Wilkinson v. Austin*, 545 U.S. 209,  
 4 229 (2005) (*Sandin* abrogated *Greenholtz*’s methodology for establishing the liberty interest).  
 5 California’s parole statute does not contain mandatory language giving rise to a protected liberty  
 6 interest in parole under the mandatory-language approach announced in *Greenholtz*. *In re*  
 7 *Dannenberg*, 34 Cal. 4th 1061, 1087 (2005) (California’s parole scheme is a two-step process  
 8 that does not impose a mandatory duty to grant life inmates parole before a suitability finding).  
 9 And continued confinement under an indeterminate life sentence does not impose an “atypical or  
 10 significant hardship” under *Sandin* since a parole denial does not alter an inmate’s sentence,  
 11 impose a new condition of confinement, or otherwise restrict his liberty while he serves his  
 12 sentence. Thus, Respondent asserts that Plaza does not have a federal liberty interest in parole  
 13 under either *Greenholtz* or *Sandin*. Respondent acknowledges that in *Sass v. California Board of*  
 14 *Prison Terms*, 461 F.3d 1123, 1128 (9th Cir. 2006) the Ninth Circuit held that California’s parole  
 15 statute creates a federal liberty interest in parole under the mandatory-language analysis of  
 16 *Greenholtz*, but preserves the argument, which is pending en banc in *Hayward v. Marshall*, 527  
 17 F.3d 797 (9th Cir. 2008).

18 8. Even if Plaza has a federal liberty interest in parole, he received all due process to  
 19 which he is entitled under clearly established federal law because he was provided with an  
 20 opportunity to be heard and a statement of reasons for the Board’s decision. *Greenholtz*, 442  
 21 U.S. at 16.

22 9. Respondent denies that the some-evidence test is clearly established federal law in the  
 23 parole context. Respondent denies that the preponderance of the evidence standard is required by  
 24 state law or that it is clearly established federal law in the parole context.

25 10. Respondent denies that the Board applied the statutory parole criteria in an arbitrary  
 26 and capricious manner or that Plaza has a reasonable expectation of release based on Penal Code  
 27 section 3041, subdivision (a). Respondent alleges that Plaza fails to present a federal question  
 28 when he contends that the state courts improperly applied or interpreted state law. Alleged errors

1 in the application of state law are not cognizable in federal habeas corpus. *Pulley v. Harris*, 465  
2 U.S. 37, 41 (1984); *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1984).

3 11. Respondent submits that an evidentiary hearing is not necessary because the claims  
4 can be resolved on the existing state court record. *Baja v. Ducharme*, 187 F.3d 1075, 1078 (9th  
5 Cir. 1999).

6 12. Respondent denies that Plaza is entitled to immediate release or that if Plaza is entitled  
7 to release, that he be released from prison without a parole term. Plaza's remedy is limited to the  
8 process that is due, which is a new review by the Board comporting with due process. *See Benny*  
9 *v. U.S. Parole Comm'n*, 295 F.3d 977, 984-85 (9th Cir. 2002) (a liberty interest in parole is  
10 limited by the Board's exercise of discretion, and a due process error does not entitle an inmate  
11 to a favorable parole decision).

12 13. Plaza fails to state or establish any grounds for habeas corpus relief.

13 14. Except as expressly admitted in this Answer, Respondent denies the allegations of the  
14 Petition.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaza claims that the Board's 2006 decision finding him unsuitable for parole violated his  
4 due process rights. But Plaza merely alleges a disagreement with the Board's decision, and fails  
5 to establish that the state court decisions denying his due process claims were contrary to, or an  
6 unreasonable application of clearly established federal law as determined by the United States  
7 Supreme Court, or were based on an unreasonable determination of the facts. Thus, there are no  
8 grounds for federal habeas relief.

9 **ARGUMENT**

10 **I.**

11 **PLAZA HAS NOT SHOWN THAT HE IS ENTITLED TO RELIEF UNDER**  
12 **AEDPA.**

13 Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) a federal court  
14 may not grant a writ of habeas corpus unless the state court's adjudication was either: 1)  
15 "contrary to, or involved an unreasonable application of, clearly established Federal law, as  
16 determined by the Supreme Court of the United States;" or 2) "based on an unreasonable  
17 determination of the facts in light of the evidence presented at the State Court proceeding."  
18 28 U.S.C. § 2254(d)(1-2) (2000). Plaza has not demonstrated that he is entitled to relief under  
19 this standard.

20 **A. Plaza Has Not Shown that the State Court Decisions Was Contrary to**  
21 **Clearly Established Federal Law.**

22 As a threshold matter, the Court must decide what, if any, "clearly established Federal law"  
23 applies. *Lockyer v. Andrade*, 538 U.S. 63, 71 (2003). In making this determination, the Court  
24 may look only to the holdings of the United States Supreme Court governing at the time of the  
25 state court's adjudication. *Carey v. Musladin*, \_\_\_ U.S. \_\_\_, 127 S. Ct. 649, 653 (2007) (quoting  
26 *Williams v. Taylor*, 529 U.S. 362 (2000)). The only case in which the Supreme Court has  
27 addressed the process due in state parole proceedings is *Greenholtz*. *Greenholtz*, 442 U.S. 1.  
28 The Supreme Court there held that due process is satisfied when the state provides an inmate an

1 opportunity to be heard and a statement of the reasons for the parole decision. *Id.* at 16. “The  
 2 Constitution does not require more.” *Id.*<sup>1/</sup> No other Supreme Court holdings require more at a  
 3 parole hearing.

4 Plaza does not contest that he received the *Greenholtz* protections. (*See generally* Pet.)  
 5 Because *Greenholtz* was satisfied and *Greenholtz* is the only Supreme Court authority regarding  
 6 an inmate’s due process rights during parole proceedings, the state court decision upholding the  
 7 Board’s decision was not contrary to clearly established federal law. Thus, the Petition should be  
 8 denied.

9 Although Ninth Circuit has held that the Board’s decision must be supported by some  
 10 evidence, there is no clearly established federal law applying this standard to parole decisions.  
 11 The Supreme Court has held that under AEDPA a test announced in one context is not clearly  
 12 established federal law when applied to another context. *Wright v. Van Patten*, \_\_\_ U.S. \_\_\_ 128  
 13 S. Ct. 743, 746-47 (2008); *Schriro v. Landrigan*, \_\_\_ U.S. \_\_\_, 127 S. Ct. 1933 (2007); *Musladin*,  
 14 127 S. Ct. at 652-54; *see also*, *Foote v. Del Papa*, 492 F.3d 1026, 1029 (9th Cir. 2007); *Nguyen*  
 15 *v. Garcia*, 477 F.3d 716, 718, 727 (9th Cir. 2007); *Crater v. Galaza*, 491 F.3d 1119, 1122 (9th  
 16 Cir. 2007). The Supreme Court developed the some-evidence standard in the context of a prison  
 17 disciplinary hearing, *Superintendent v. Hill*, 472 U.S. 445, 457 (1985), which is a fundamentally  
 18 different context than a parole proceeding. Because the tests and standards developed by the  
 19 Supreme Court in one context cannot be transferred to distinguishable factual circumstances for  
 20 AEDPA purposes, it is not appropriate to apply the some-evidence standard of judicial review to  
 21 parole decisions.

22 Thus, the Ninth Circuit’s application of the some-evidence standard to parole decisions is  
 23 improper under AEDPA. *See, e.g.*, *Biggs v. Terhune*, 334 F.3d 910 (9th Cir. 2003); *Sass*, 461  
 24 F.3d at 1128; *Irons v. Carey*, 505 F.3d 846, 851 (9th Cir. 2007). Moreover, AEDPA does not

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 26 1. The Supreme Court has cited *Greenholtz* approvingly for the proposition that the “level  
 27 of process due for inmates being considered for release on parole includes an opportunity to be heard  
 28 and notice of any adverse decision” and noted that, although *Sandin* abrogated *Greenholtz*’s  
 methodology for establishing the liberty interest, *Greenholtz* remained “instructive for [its]  
 discussion of the appropriate level of procedural safeguards.” *Austin*, 545 U.S. at 229.

1 permit relief based on circuit caselaw. *Crater*, 491 F.3d at 1123, 1126 (§ 2254(d)(1) renders  
2 decisions by lower courts non-dispositive for habeas appeals); *Earp v. Ornoski*, 431 F.3d 1158,  
3 1182 (9th Cir. 2005) (“Circuit court precedent is relevant only to the extent it clarifies what  
4 constitutes clearly established law.” . . . “Circuit precedent derived from an extension of a  
5 Supreme Court decision is not clearly established federal law as determined by the Supreme  
6 Court.”); *Duhaime v. Ducharme*, 200 F.3d 597, 600-01 (9th Cir. 2000). Therefore, the Ninth  
7 Circuit’s use of the some-evidence standard is not clearly established federal law and is not  
8 binding on this Court.

9       Moreover, Plaza has not demonstrated that the Board’s reliance on its regulations to find  
10 him unsuitable for parole violates his federal rights in any way. To the extent he is alleging a  
11 violation of state law — such as his allegations that the Board applied California’s statutory  
12 parole criteria in an arbitrary and capricious manner or that he has a reasonable expectation of  
13 release to parole based on Penal Code section 3041, subdivision (a) — federal habeas relief is  
14 precluded. A writ of habeas corpus is available under 28 U.S.C. § 2254 only on the basis of  
15 some transgression of federal law binding on the state courts. *See Peltier v. Wright*, 15 F.3d 860,  
16 861 (9th Cir. 1993). A federal writ is not available for alleged error in the interpretation or  
17 application of state law. *See Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991); *Park v.*  
18 *California*, 202 F.3d 1146, 1149 (9th Cir. 2000); *Middleton v. Cupp*, 768 F.2d 1083, 1085 (9th  
19 Cir. 1985).

20       Even assuming Plaza alleges a federal claim, he is not entitled to federal habeas relief  
21 under AEDPA. Because the Board and state courts provided Plaza with individualized  
22 consideration regarding his suitability for parole, Plaza failed to prove that the Board applied  
23 California’s statutory parole criteria in an arbitrary and capricious manner. Moreover, there is no  
24 United States Supreme Court law mandating that a release date be calculated before an inmate is  
25 found suitable for parole. Thus, Plaza cannot state a claim for relief under AEDPA.

26       Similarly, Plaza’s related claim that the Board’s reliance on the immutable factor of his  
27 commitment offense violates due process finds no support in Supreme Court precedent.  
28 Although the Ninth Circuit has suggested that this might amount to an additional due process

1 claim, *Biggs*, 334 F.3d at 917, because there is no clearly established federal law precluding  
 2 reliance on unchanging factors federal habeas relief is not available. 28 U.S.C. § 2254(d).

3 In sum, the only clearly established federal law setting forth the process due in the parole  
 4 context is *Greenholtz*. Plaza does not allege that he failed to receive these protections.  
 5 Therefore, Plaza has not shown that the state court decisions denying habeas relief were contrary  
 6 to clearly established federal law.

7 **B. Plaza Has Not Shown that the State Courts Unreasonably**  
 8 **Applied Clearly Established Federal Law.**

9 Habeas relief may only be granted based on AEDPA's unreasonable-application clause  
 10 where the state court identifies the correct governing legal rule from Supreme Court cases but  
 11 unreasonably applies it to the facts of the particular state case. *Williams*, 529 U.S. at 406. The  
 12 petitioner must do more than merely establish that the state court was wrong or erroneous. *Id.* at  
 13 410; *Lockyer*, 538 U.S. at 75. Respondent recognizes that the Ninth Circuit applies the some-  
 14 evidence standard as clearly established federal law, but even accepting that premise, Plaza is not  
 15 entitled to federal habeas relief. Indeed, the California Supreme Court has adopted *Hill*'s some-  
 16 evidence test as the judicial standard to be used in evaluating parole decisions, *In re Rosenkrantz*,  
 17 29 Cal. 4th 616 (2002), and Plaza has not shown that the state courts unreasonably applied the  
 18 standard.

19 Here, the superior applied the some-evidence test and issued a reasoned decision finding  
 20 that Plaza's commitment offense and the trivial motive for his crime was some evidence to  
 21 support denying him parole. *Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991) (federal court  
 22 looks to the last reasoned state court decision as the basis for the state court judgment); (Ex. B at  
 23 1-2.) Although Plaza invites the Court to re examine the facts of his case and re-weigh the  
 24 evidence presented to the Board, there is no Supreme Court law permitting this degree of judicial  
 25 intrusion. Indeed, the Supreme Court has recognized the difficult and sensitive task faced by the  
 26 Board in evaluating the advisability of parole release. *Greenholtz*, 442 U.S. at 9 10. Thus,  
 27 contrary to Plaza's belief that he should be paroled based on the evidence in support of his parole  
 28 (*see generally*, Pet.), the Supreme Court has stated that in parole release, there is no set of facts

1 which, if shown, mandate a decision favorable to the inmate. *Id.* Thus, Plaza has not  
 2 demonstrated that the state court reasonably applied the minimal some-evidence test. *Hill*, 472  
 3 U.S. at 457.

4 **C. Plaza Has Not Shown that the State Court Decisions Were**  
 5 **Based on an Unreasonable Determination of the Facts.**

6 Under § 2254(d)(2), habeas corpus can not be granted unless the state courts' decisions  
 7 were based on an unreasonable determination of the facts in light of the evidence presented in the  
 8 state court. The state court's factual determinations are presumed to be correct, and the petitioner  
 9 has the burden of rebutting that presumption by clear and convincing evidence. 28 U.S.C. §  
 10 2254(e)(1).

11 Although Plaza alleges that the Board's decision is not supported by the evidence, he  
 12 does not show that the state court made factual errors. Specifically, the court found that some  
 13 evidence supported the Board's finding that Plaza's murder offense was carried out in a  
 14 calculated and dispassionate manner because there was evidence that Plaza drove slowly with his  
 15 headlights turned off to avoid detection by the victim and thus showed planning and a deliberate  
 16 intent to kill the victim. (Ex. B at p. 1.) The court also found that there was some evidence that  
 17 the motive for Plaza's crime was trivial in relationship to the offense because he shot the victim  
 18 for being a rival gang member, noting that there was no evidence that the victim had threatened  
 19 or harmed Plaza. (*Id.* at 2.)

20 Thus, for the foregoing reasons, Plaza has not alleged by clear and convincing evidence  
 21 that the factual determinations are incorrect. Plaza simply disagrees with the weight the Board  
 22 assigned to the evidence. This disagreement does not entitle Plaza to federal habeas relief.

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2 **CONCLUSION**

3 Plaza has not demonstrated that the state court decisions denying habeas relief were  
4 contrary to, or an unreasonable application of, United States Supreme Court authority, or based  
5 on an unreasonable determination of the facts. Thus, the Petition should be denied.

6 Dated: July 2, 2008

7 Respectfully submitted,

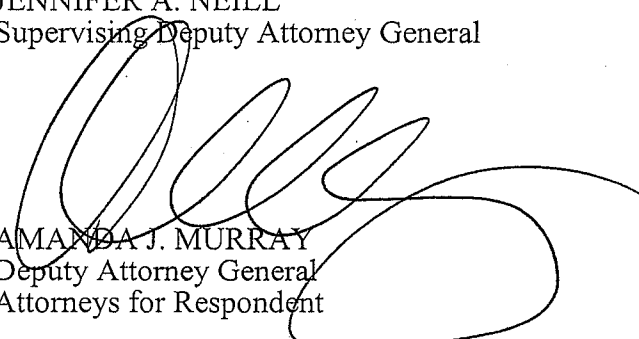
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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Plaza v. Curry**

No.: **C08-1589 JF**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **July 2, 2008**, I served the attached

**ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS;  
MEMORANDUM OF POINTS AND AUTHORITIES**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Jesse M. Plaza, H-12371  
Correctional Training Facility  
P.O. Box 689  
ZW-302U  
Soledad, CA 93960-0689  
in pro per**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **July 2, 2008**, at San Francisco, California.

\_\_\_\_\_  
M.M. Argarin  
Declarant

\_\_\_\_\_  
*M.M. Argarin*  
Signature



# **EXHIBIT A**

## **Part 1 of 2**

MC-275

Name JESSE PLAZA

Address CTF CENTRAL F-338U

P.O. BOX 689

SOLEDAD, CA 93960-0689

CDC or ID Number H-12371

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

FEB 23 2007

John A. Clarke, Executive Officer/Clerk  
By [Signature], Deputy

SUPERIOR COURT OF CALIFORNIACOUNTY OF LOS ANGELES

(Court)

## PETITION FOR WRIT OF HABEAS CORPUS

<b>JESSE PLAZA</b>
Petitioner
vs.
<b>BEN CURRY, Warden</b>
Respondent
<b>Correctional Training Facility</b>

No. \_\_\_\_\_  
(To be supplied by the Clerk of the Court)

## INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Page one of six

## This petition concerns:

☐ A conviction☒ Parole☐ A sentence☐ Credits☐ Jail or prison conditions☐ Prison discipline☒ Other (specify): Illegal finding of unsuitability by the Board of Parole Hearings.

1. Your name: Jesse Plaza
2. Where are you incarcerated? Correctional Training Facility, Soledad, CA 93960-0689
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

First Degree Murder

b. Penal or other code sections: Penal Code §187

c. Name and location of sentencing or committing court: Los Angeles Superior Court, Norwalk, CA

d. Case number: VA004108

e. Date convicted or committed: 7-20-91

f. Date sentenced: 9-28-91

g. Length of sentence: 25 years to life

h. When do you expect to be released? "unknown"

i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

Stephen Garcia, Attorney at Law , address unknown

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

## 6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

THE NINTH CIRCUIT COURT OF APPEALS HAS FOUND THAT THE MANDATORY LANGUAGE OF P.C. 3041-  
(b) IMPOSES AN AFFIRMATIVE OBLIGATION BY THE CALIFORNIA BOARD OF PAROLE HEARINGS  
TO GRANT PAROLE, WHICH CREATES A LEGALLY COGNIZABLE LIBERTY INTEREST IN PAROLE  
AND A PRESUMPTION THAT PAROLE RELEASE WILL BE GRANTED. THERE IN NO EVIDENCE HAVING  
AN "INDICIA OF RELIABILITY" THAT PETITIONER IS A CURRENT OR UNREASONABLE RISK TO  
SOCIETY. THE HEARING AND DECISION BY THE CALIFORNIA PAROLE BOARD WAS ARBITRARY AND  
CAPRICIOUS IN VIOLATION OF PETITIONER'S STATE AND FEDERAL DUE PROCESS RIGHTS.

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Petitioner, JESSE PLAZA, petitions for a writ of habeas corpus and  
 by this verified petition alleges as follows:

## I

Petitioner is in custody of the California Department of Corrections  
 at the Correctional Training Facility in Soledad, California serving  
 a term of 25 years to life following his conviction in 1991 in Los Angeles  
 County Superior Court Case No. VA004108 wherein petitioner was convicted  
 of first degree murder in violation of Penal Code section 187. Petitioner  
 was received by the Department of Corrections on October 9, 1991, when  
 his life term commenced. This petition is intended to give meaning to  
 Petitioner, JESSE PLAZA, (hereinafter "Petitioner"), sentence of 25 years  
 to life for 'first degree murder'. On May 1, 2006, Petitioner went before  
 the Board of Parole Hearings for his initial parole. (Petitioner's minimum

## b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

1 eligible parole date is 1-25-07) for a finding of suitability, and the  
2 setting of his term uniformly. Petitioner submits that the Board of  
3 Parole Hearings (hereafter "Board") regulations, California Code of  
4 regulations, Title 15, section 2402(a) DEMANDS that the Board set a  
5 release date unless Petitioner currently presents an unreasonable risk  
6 of danger to public safety. Petitioner submits that there is nothing  
7 in the Board's decision indicating the basis for that belief, which  
8 Petitioner discusses and proves *infra*.

9  
10 II

11 On May 1, 2006, the Board conducted petitioner's Initial Parole  
12 Consideration Hearing. The Board found petitioner unsuitable and denied  
13 parole for a period of two years. (Exhibit "A" 89-93) In support of its  
14 findings that petitioner currently posed an unreasonable risk to society,  
15 the Board found that the "offense was carried out in an especially cruel  
16 and callous manner", "carried out in a calculated manner", "The motive  
17 for the crime was very trivial in that it was a gang related shooting",  
18 and the unsupported conclusion that petitioner has refused to take  
19 responsibility for his actions. Petitioner was, however, commended for  
20 programming extremely well, commended for remaining disciplinary free,  
21 obtaining a positive psychological evaluation, participating in AA and  
22 NA, completing two vocations and securing positive parole plan. (Exhibit  
23 "A", p. 89-93). Despite all the evidence supporting a granting of parole,  
24 the Board found petitioner unsuitable for a grant of parole based on  
25 the commitment offense, including and unsupported conclusion that  
26 petitioner tries to minimize his responsibility.

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## III

Petitioner alleges that there was no evidence to support the Board's finding that he poses a current unreasonable risk if released. In fact, all current, reliable evidence presented to the Board shows that petitioner poses no risk if released, Petitioner further alleges that the Parole Board violated petitioner's statutory rights and his Fifth and Fourteenth Amendments (due process rights), when it refused to grant petitioner a parole date despite evidence supporting a finding that petitioner posed no unreasonable risk of harm. Furthermore, his continued confinement constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

## IV

Petitioner also submits the Board spoke in meaningless generalities and never specified the exact nature of Petitioner's current character that would make Petitioner a danger to society. And by not doing so, the Board violated Penal Code §3041, which dictates that the Board shall normally set a parole release date at Petitioner's Initial Hearing. Petitioner, further submits that the issue raised in this Petition are of constitutional dimension, questioning the legality of Petitioner's confinement. An indeterminately sentence prisoner must be paroled when there is no evidence that Petitioner is a current or unreasonable risk to society. The California Supreme Court has recognized that parole applicants' possess a "protected liberty interest under the California Due Process Clause". (In re Rosenkrantz, (2002) 29 Cal.4th 616, 660; cf. McQuillion v. Duncan (9th Cir. 2002) 306 F.3d 895, 901. It is well established that Courts may review the Board's parole decisions under

1 a highly deferential standard of review, and must reverse those decisions  
2 if there is not "some evidence" in the record to support them.  
3 (Rosenkrantz, supra 29 Cal.4th at 667; In re Smith (2003) 109 Cal.App.4th  
4 489. Petitioner submits there is no evidence that Petitioner is currently  
5 a threat to public safety.

6  
7 PETITIONER NOW SUBMITS THE FOLLOWING POINTS AND AUTHORITIES IN SUPPORT  
8 OF THIS PETITION FOR WRIT OF HABEAS CORPUS

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1                    MEMORANDUM OF POINTS AND AUTHORITIES

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3                    **THE MURDER STATUTES TOGETHER WITH THE PAROLE STATUTES**  
4                    **IMPOSE AN AFFIRMATIVE OBLIGATION UPON THE BOARD TO**  
5                    **SET PAROLE DATES IN CASES LIKE THIS ONE. THE**  
6                    **REGULATIONS IMPLEMENT THOSE STATUTES**

7                    Under the Board's regulations, pursuant to Penal Code  
8                    §3041(b), a prisoner may be found unsuitable for parole if  
9                    the Board determines that the offense or a past offense and  
10                   its timing is of such gravity that a longer period of  
11                   incarceration is required in the interest of public safety.  
12                   The determination is made based on the standards set forth  
13                   by the Board's regulations. The principle guidelines in making  
14                   the determination is Cal. Code. Regs. §2401 (c)-(1-6):

15                   (1) Commitment Offense. The prisoner committed the offense in  
16                   an especially heinous, atrocious or cruel manner. The factors  
17                   to be considered include:

18                   (A) Multiple victims were attacked, injured, or killed  
19                   in the same or separate incidents.

20                   (B) The offense was carried out in a dispassionate and  
21                   calculated manner, such as an execution-style murder.

22                   (C) The victim was abused, defiled or mutilated during  
23                   or after the offense.

24                   (D) The offense was carried out in a manner which  
25                   demonstrated an exceptionally callous disregard for human  
26                   suffering.

27                   //

(E) The motive of the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

Circumstances (1), (2), and (4) reasonably reflect the sole specified and authorized statutory exception to setting parole release dates, for the current or a past convicted offense(s). Factor (E) of Circumstances (1), however, pertaining to the motive of the crime as being inexplicable, although typically stated by the board as a factor for denying parole, is a rare circumstance, as there is almost always, as here, an explanation

as to why the offense occurred. Whether the motive was trivial is another matter. As one court noted:

"The epistemological and ethical problems involved in the ascertainment and evaluation of motive are among the reasons the law has sought to avoid the subject. As one authority has stated, "[hardly any part of penal law is more settled than that motive is irrelevant." (Hall, General Principles of Criminal Law (2d ed. 1960) at p. 88; see also Husak, **Motive and Criminal Liability** (1989) vol. 8, No. 1, **Crim. Justice Ethics** 3.)"

**The court further explained:**

"The offense committed by most prisoners serving life sentences is, of course, murder. Given the high value our society places upon life, there is no motive for unlawfully taking the life of another human being that could not be deemed "trivial". The Legislature has foreclosed that approach, however, by declaring that murderers with life sentences must "normally" be given release dates as they approach their minimum eligible release dates. (Pen. code, §3041, subd. (a).") (**In re Scott**, 119 Cal.App.4th 871, 892-893.)

It is therefore questionable whether the factor has any evidentiary value in this case. If the motive was indeed inexplicable "A person whose motive for a criminal act can not be

explained or is unintelligible is therefore unusually unpredictable and dangerous." (Id.) Such is not the case here.

The primary circumstance and factors considered to make the determination, §2402(d)(1)(B) and (D), have been explained by the courts. To qualify for the authorized exception, an offense must be exceptionally egregious. The court of appeal characterized this as follows:

"In re Van Houten (2004) 116 Cal.App.4th 339 [10 cal.Rptr.3d 406] illustrates the sort of gratuitous cruelty required. The prisoner in that case was involved in multiple stabbings of a woman with a knife and bayonet, While she was dying, the victim was made aware her husband was suffering a similarly gruesome fate. As stated by the court, "[t]hese acts of cruelty far exceeded the minimum necessary to stab a victim to death." (Id. at p. 351) Other examples of aggravated conduct reflecting an "exceptionally callous disregard for human suffering," are set forth in Board regulations relating to the matrix used to set base terms for life prisoners (§2403, subd. (b)); namely, "torture," as where the "[v]ictim was subjected to the prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death, " and "severe trauma." as where "[d]eath resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a

weapon not resulting in immediate death or actions calculated to induce terror in the victim." (Ibid.) (In re Scott, supra, 119 Cal.App.4th 871, 892.)

In this case there is no evidence of gratuitous cruelty or torture such as described in the foregoing. Moreover, even in such cases, involving those exceptional factors, the Board's regulations and suggested terms indicate parole suitability after serving the indicated base terms.

Circumstances (3) of the unsuitability factors, "Unstable Social History" appears to be related to the commission of violent past offenses and gravity thereof. It is not a factor in this case.

Circumstance (5), "Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense." is not applicable in this case, and the Psychological Report does not indicate any such assessment.

Circumstance (6), "Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail." This should reasonably relate to misconduct like that which may result in rescission proceedings as is enumerated in Cal. Code Regs., tit. 15, §2451, or more properly, be punished by the provisions of Cal. Code Regs., tit. 15, §2410, which provides for "Postconviction Credit", and not used as a substitute for statutory "suitability" provisions which specify only the gravity of the current or a past offense to deny parole.

This "circumstance" is often relied upon by the Board to deny parole to indeterminately sentenced prisoners repeatedly and

for years at a time. Yet, determinately sentenced prisoners might suffer only the loss of a few months of credit, once, for the same misconduct, which they can even get restored. As such, the Board's determinations that rely on such circumstances to deny parole, particularly beyond the indicated matrix base terms, is unauthorized by Penal Code 3041, is unfair, unreasonable and constitutes unequal punishment for the same conduct. A blatant violation of Petitioner's due process rights protected by the 5th & 14th Amendments of the United States Constitution.

RELIANCE ON THE COMMITMENT OFFENSE TO DENY PAROLE AT  
ALL INITIAL HEARINGS AND ALMOST ALL SUBSEQUENT HEARINGS  
IS INCONSISTENT WITH STATUTORY LANGUAGE AND CONTRARY TO  
SUPREME COURT AUTHORITY

The Board's reliance on the commitment offense to deny parole at all initial hearings and almost all subsequent hearings fails to give effect to the statutory minimum terms despite Penal Code §3041 language that parole shall normally be granted at the initial hearing. The Board promulgated regulations pursuant to Penal Code §3041(a) which include standardized gravity matrices, but routinely denies parole for the same circumstances and factors specifying appropriate terms. (See Cal. Code Regs., tit. 15, §2400 et seq., footnotes citing implementation authority.)

Although it is presumed that the Board performs its duties lawfully, it is hardly debatable that the Board does not "normally" set parole release dates, as a matter of policy. And when it does, in about 2% of cases, the Governor reverses most of those, like here. as a matter policy, where there is no substantial evidence to support the decision. See, for example, In re Capistran, (2003) 107 Cal.App.4th 1297, In re Mark Smith, (2003) 109 Cal.App.4th 489; In re Ernest Smith, (2003) 114 Cal.App.4th 343, to name a few published cases. Because of the minimal "evidence" required under the "some evidence" standard, most of the denials and reversals of parole withstand court challenges. release on parole presumed by statutory language gives rise to a substantial right, but has been disregarded. the



great majority of indeterminately sentenced prisoners have been repeatedly denied parole, but would have been released long ago under reasonable administration of the statutes and regulations.

"The Court has an obligation, however, to look beyond the facial validity of a statute that is subject to possible unconstitutional administration since a 'law though 'fair on its face and impartial in appearance' may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings." Minnesota v. Probate Court (1940) 309 U.S. 270, 277.

Although the most recent interpretation of the statute at issue now holds that proportionality or comparison of like offenses is not required, i.e., In re Dannenberg (2005) 34 Cal.4th 1061, the Ninth Circuit has previously stated:

"While the interpretation gloss on the statute may bind this court as a matter of statutory construction, we are not, however, similarly bound as to the constitutional effect of the construction." McSherry, 880 F.2d at 1053" (Aponte v. Gomez, 993 F.2d 705 (9th Cir. 1993) (emphasis added)

This most recent interpretation of the statutes is

inconsistent with decisions and history leading up to the changes in the parole statutes, which prior decisions recognized, as previously discussed:

"In contrast, by altering the statutory scheme and enacting the DSL, the Legislature recited specifically that it "finds and declares that the purpose of imprisonment for crime is punishment." (Pen. Code §1170, subd. (a)(1); all subsequent statutory references are to this code.) The new law provides that an inmate's "release date shall be set in manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the judicial council may issue and any sentencing information relevant to the setting of parole release dates. **The board shall establish criteria for the setting of parole release dates** and so doing shall consider the number of victims of the crime for which the prisoner is sentenced and other factors in mitigation and aggravation of the crime." (§3041, subd. (a), italics added.) The present parole guidelines were promulgated pursuant to the new act. Thus, the guidelines are not mere administrative responses to the Board's internal shifting discretion but rather reflect basic legislative alterations in the underlying parole scheme. (In re Stanworth (1982) 33 Cal.3d 176, 182.) (Underlining emphasis added.)

Clearly, the interpretation of the law shortly after it was changed was that the Board's discretion was limited by the legislative alterations and guidelines. The changes were clearly intended to place limits on the Board's discretion:

"That, the Montana statute places significant limits on the Board's discretion is further demonstrated by its replacement of an earlier statute which allowed absolute discretion ...." Board of Pardons v. Allen, 482 U.S. 369.

Like with the Montana statute, in California the former Penal Code §3041 was completely changed, mandating the establishment of criteria for the normal setting of parole dates. Furthermore, Penal code §3041(b) clearly spells out why the board may require an extended period of incarceration. Because the Governor is bound by the same standards as the Board, the same would apply to the Governor. The current interpretive gloss on the parole and related statutes reverts plain statutory intent to the previous parole scheme by judicial omission of part of the whole, and violates principles of statutory construction, offending due process and ex post facto law.

THE "SOME EVIDENCE" STANDARD MUST "TEND LOGICALLY", AND BY "REASONABLE INFERENCE" TO ESTABLISH A FACT RELEVANT TO PETITIONER'S SUITABILITY FOR PAROLE.

Petitioner, denies the "some evidence" standard used by the Board satisfied the requirements under both state and federal due process. To satisfy the "some evidence" standard of Judicial Review of the Board's ultimate decision, only a "modicum of evidence is required". *Rosenkrantz*, 29 Cal.4th at 677; *Hill, supra*, 427 U.S. at 456. However, the "some evidence" standard applies to evidentiary sufficiency and is not a substitute for other due process requirements, *Edward v. Balisok*, (1977) 520 U.S. 641, 648, such as the Board's own preponderance of material and relevant evidence. (See Cal.Code of Regulations, tit 15, section 2000 (50)(63)(91). Thus, to determine whether the Board has fulfilled it's minimal due process procedural requirements, a reviewing Court looks not first at the decision, but the process in which it arrived at that decision. *Balisok, supra*, Ibid.

Here the Board continues to interpret the "some evidence" standard illegally. The Board's decision in this case failed to point to evidence demonstrating that Petitioner **currently** presents an unreasonable risk of danger to society - the ultimate question in determining Petitioner's suitability for parole (CCR, Tit. 15, §2403, subd. (a) For this reason, the evidence underlying the Board's decision does not tend logically and by reasonable inference, to establish a fact relevant to the inmate's suitability for parole. (*Morrall, supra*, 102 Cal.App.4th

at pp. 298-299). The discretion of the Board to determine parole suitability, although broad, is not absolute, and the Board's decisions must be supported by "some evidence" (*In re Powell*, (1988) 45 Cal.3d 894, 902-904; see also *Terbune v. Superior Court* (1998) 65 Cal.App.4th 864, 872-873; *In re Minnis* (1972) 7 Cal.3d 639, 646-647).

The United States Supreme Court has made it clear that the "some evidence" standard discussed in *Superintendent v. Hill* (1985) 472 U.S. 445, is only one aspect of judicial review for compliance with minimum standards of due process. The California Legislature has given the Board guidelines to follow in evaluating a parolee's eligibility for parole, mandating that the Board "shall normally" set a parole release date... "in a manner that will provide "uniform terms" for offenses of similar gravity and magnitude in respect to their threat to the public"... (Id., quoting Penal Code §3041, subd. (a).) The Board is required to "establish criteria for the setting of parole release dates." (Ibid.) However, the Board lacks discretion to promulgate regulations that are inconsistent with governing statutes, and the judicial branch has the final word on questions of legal interpretation." (Id., citing *Terbune v. Superior Court*, supra, 65 Cal.App.4th 864, 873)(emphasis added).

Petitioner asserts that the "some evidence" standard is being applied arbitrarily by the reviewing Court's in the State of California. The Courts of California, both State and Federal, seem to have settled in for the "some evidence" standard of Judicial Review. (See, e.g., *McQuillion v Duncan*, 306 F.3d 895 (9th cir. 2002), and in *In re Rosenkrantz*, 29 Cal.4th 616 (2002).

without taking into consideration the "substantial evidence" standard which is required by reviewing courts **Consolidated Edison Co. vs NLRB**, 305 U.S. 197 (1939) (See Page 9)

The "some evidence" standard derives from the United States Supreme Court decision in **Superintendent v. Hill**, 472 U.S. 445; 105 S.Ct. 276 (1985), and is expressly a standard of "Judicial Review" for reviewing Court's, not the Board's Standard

The first California decision applying the "some evidence" standard of **Hill** was in the case of **In re Powell**, 45 Cal.3d 894 (1988). The **Powell** case was one where the Board of Prison Terms rescinded a parole grant based on a psychological report. In his petition, **Powell** argued for the "independent judgment" standard to the facts before the Board, or alternatively, the "substantial evidence" test. The People argued for the deferential "some evidence" test. **Powell** argued for the independent judgment test analogizing habeas corpus proceedings to administrative mandamus proceedings under California Code of Civil Procedure section 1094.5. That code section provides for review of administrative orders or decisions; in some cases it applies the independent judgment test while in other circumstances the substantial evidence test. If the former, and abuse of discretion is established when the Court, exercising its independent judgment determines the administrative findings are not supported by the weight of the evidence. If the latter, the Court must accept all evidence favorable to the Respondent as true and disregard any unfavorable evidence, if the evidence so viewed is sufficient as a matter of law, the order or decision must be affirmed. In rejecting **Powell's** argument, the court held that standard only

applies when an administrative decision affects a vested right. This is a pivotal point. The **Powell** Court determined that "a prison inmate has no vested right in his prospective liberty on a parole release date". (id. at 903). It cited to pre-1977 cases of **In re Fain**, 65 Cal.App.3d 376 (1976), and to **In re McLain**, 5 Cal.2d 78, 87 (1960), also cited by **Fain**, *supra*. However, two critical facts were not present at the time of the decision, (1) there was no liberty interest created by pre-1977 section 3041; and (2) the California Supreme Court had not defined post-1977 section 3041, as having vested a liberty interest in a parole release date, as it did later in the **Rosenkrantz** decision 29 Cal.4th 616 (2002), following on the heels of **McQuillion v, Duncan**, 306 F.3d 895, 901-903 (9th cir. 2002), which interpreted Section 3041 as creating an "expectancy of release" that was a cognizable liberty interest protected by federal due process. Thus, the **Powell** Court was wrong about whether a vested right was involved, and its decision to apply the "some evidence" standard instead of the "independent judgment test" or "substantial evidence" was also wrong because it was based on an incorrect interpretation of law.

Yet, the California Supreme Court in the **Rosenkrantz** case, 29 Cal.4th 616, applied the "some evidence" standard of **Superintendent v. Hill**, 472 U.S. 445 (1985), in such language as to confuse the lower Courts as to its specific purpose. i.e., the standard of judicial review. It carried forward the "some evidence" standard originally applied in **In re Powell**, 45 Cal.3d 894 (1988). The **Rosenkrantz** Court did not make clear that the "some evidence" standard was not a standard applied by the board



itself as a standard of proof in its deliberations. It appears that the omission by the **Rosenkrantz Court** of any articulation of what the Board's standard of evidence would be as a critical component to the deliberative process of weighing and balancing of evidence, has resulted in the Board not applying their own preponderance of relevant and material evidence standard (CCR, Title 15, Div. 2, Section 2000; (50) Good Cause (63) Material Evidence (91) Relevant Evidence), thereby rendering every decision to grant or deny parole completely standardless, and thus arbitrary and capricious.

Typically in California, the judicial standard of review of the ultimate decision of the Board of Parole Hearings denying parole to a prisoner has been the "some evidence" standard. In **re Dannenberg** (2005) 34 Cal.4th 1061; In **re Ramirez** (2001) 94 Cal.App.4th 549, 564; In **re Rosenkrantz**, [Rosenkrantz V] (2002) 29 Cal.4th 565, 616. Although both **Rosenkrantz** and **Dannenberg** thus affirmed the importance of judicial review of the board decisions, the decision's provide less than clear guidance as to the proper application of the "some evidence" standard articulated in both decisions. Of particular concern is the **Dannenberg Court's** brief discussion in dicta of the "commitment offense" factor, which can improperly be read as granting to the Board the ability to deny parole on the basis of almost any fact imaginable. As a result, there is a real risk the State will interpret the standard to assert, de facto, the power it has been expressly denied; effective immunity from meaningful judicial review of parole decision. It should be recognized, however, that

several courts are struggling to determine exactly how this standard applies. While other Court's (post **Dannenberg & Rosenkratz**) has held that the "some evidence" standard must apply to **current dangerousness**. While interpreting this standard the California Court of Appeals, Second Appellate District in the case of **In re WEN LEE**, (Oct. 17, 2006, B188831)(2006 DJDAR 13961) the Court held;

...We conclude, however, that the governor erred. The test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. (Cal.Code Regs., tit. 15, §2402, subd. (a) [parole denied if prisoner "will pose an unreasonable risk of danger to society if released from prison"]; see **In re Scott** (2005) 133 Cal.App.4th 573, 595 ["The commitment offense can negate suitability [for parole] only if circumstances of the crime ... rationally indicate that the offender will present an unreasonable public safety risk if released from prison"] but see **In re Lowe** (2005) 130 Cal.App.4th 1405 [suggested "some evidence" applies to the factors, not dangerousness]. Some evidence of the existence of a particular factor does not necessarily equate to some evidence the parolee's release unreasonably endangers public safety.

In the case of **In re Elkins**, (Oct. 31, 2006, A111925) the

Court of Appeals, First Appellate District, held that;

..."The 'some evidence' standard is extremely deferential and reasonably cannot be compared to the standard of review involved in ... considering whether substantial evidence supports the findings" , nevertheless, it requires" ' "some indicia of reliability" ' " (Scott II, supra, 133 Cal.App.4th at p. 591, quoting Biggs v. Terbune, (9th Cir. 2003) 334 F.3d 910, 915) and "may be understood as meaning that suitability determinations must have some rational basis in fact" (Scott II, at p. 590, fn. 6).

One thing is for certain, even if a mere "some evidence" standard is to apply in this review, that standard is only a vehicle for the Court's review of the Board's decision, not a standard for the Board itself to apply. The findings to support that initial decision by the Board to deny parole, however, must be that the record indicates the Petitioner, poses a "current" danger to the public. That finding can not be based on such flimsy evidence as to render it mere whim or caprice. (See In re Ramirez, supra, at 564; See also In re Powell, (1988). To the contrary, as set forth herein, the Board's decision must be made under the preponderance of evidence standard. (Cal.Code of Reg., Title 15, Div. 2, section 2000 (50) Good Cause).

Petitioner denies the "some evidence" standard used By the Board satisfied the requirements under both state and federal due

process. Petitioner asserts reliance on the Commitment offense does not satisfy the "some evidence" standard. There is no question that under **Rosenkrantz** and **Dannenberg** the statutory "commitment offense" factor is relevant, and that it may at times be enough to deny parole on its own, neither **Rosenkrantz** nor **Dannenberg** stands for the principle that the commitment offense is always enough by itself. In fact, both cases affirmatively state that reliance on the commitment offense alone might, in some circumstances, rise to the level of a due process violation. That conclusion is consistent with the concern raised by the Ninth Circuit in **Biggs v. Terbune**, that the reliance on an ever-frozen, unchanging factor - such as the commitment offense - in denying parole may in certain instances violate due process. This point was also addressed in the case of **In re Ramirez**, 94 Cal.App.4th 549, at 571 (2001), when the Court noted that reliance on the crime after 17 years in prison was arbitrary. Petitioner has been incarcerated 17 years. While the proportionality aspects of the **Ramirez** decision were disapproved by the California Supreme court decision in **In re Danneneberg**, the entirety of **Ramirez** decision, including this aspect, was not disapproved. Therefore, the Board's reliance on the commitment offense violates due process. The predictive value of the crime after 17 years of incarceration is zero. Furthermore, in the case of **In re Scott**, 34 Cal.Rptr.3d 905 (Cal.App.1 Dist. 2005), the Court clearly reaffirmed the rationale of the **Ramirez** Court when it declared "...Parole is the rule rather than the exception"... Thus, the California Board of Parole Hearings continuous use of the "some evidence" standard as their proper

standard of review is inappropriate, thus, illegal. Furthermore, reviewing Courts using the "some evidence" standard violates principles of appellate review. Substantial evidence is the standard required for a reviewing Court. **Consolidated Edison Co. of New York v. NLRB**, 305 U.S. 197 (1939). It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. **Chrysler v. U.S. Environment Protection Agency, C.A.**, 631 F.2d 865, 890. Under a proper analysis, the "substantial evidence" test, and not a "some evidence" review is the appropriate standard.

ALL RELEVANT AND RELIABLE POST-CONVICTION EVIDENCE  
MUST BE GIVEN THE REQUIRED CONSIDERATION IN FAVOR  
OF PETITIONER IN LIGHT OF THE EVIDENCE PRESENTED

Petitioner submits that the Board bases its reasons for Petitioner's continued incarceration on historical facts that can never change, thus ignoring the uncontradicted evidence of Petitioner's rehabilitation. Petitioner has achieved the very goal that is hailed by our judicial and correctional systems, coming to prison, turning his life around and committing himself wholeheartedly to bettering himself and the world around him. Petitioner asserts there is **no evidence** that Petitioner is **currently** a threat to public safety. At Petitioner's hearing the Board denied Petitioner parole using static factors, despite overwhelming evidence showing Petitioner's rehabilitation. Petitioner asserts he has taken every available step to improve his life, pay his debt to society, and prepare himself for eventual release, as it is required under penal code §3041 for eligible prisoners serving indeterminate sentences. The Board's reliance on the Commitment Offense as satisfying the "some evidence" standard of review is without merit, after removing the facts erroneously relied upon, relied exclusively upon the Commitment Offense and failed to weigh and consider Petitioner's remorse,, positive psychological profile, lack of future dangerousness, and both realistic and positive parole plans including housing, education, and employment. The Board is required to consider all relevant information about a prisoner, not simply his commitment offense. His "risk of danger to society

is to be assessed in light of all relevant information available to the panel. (Cal. Code Regs., tit. 15, §2402(b)).

Under the view of the California parole process, it is clear that the nature of the commitment offense can constitute a basis for denial only to the extent it sheds light on whether a prisoner "now poses a risk of danger to society". Relying on the offense after years in custody and clear evidence of rehabilitation becomes arbitrary. At some point along the parole consideration process, that excuse to refuse to set a parole date enlight of exemplary conduct and behavior becomes arbitrary, and the term, although initially valid, becomes disproportionate and therefore unlawful. As time passes, and as the appropriate uniform term for the offense approaches, the offense itself sheds less and less light on how a prisoner will behave on the outside. His record in prison, his mental health, his conduct and achievements, all shed more light on his readiness to rejoin society. (see *Deluna*, supra 2005 WL 268045, 6) a defendant's postcommitment institutional behavior is relevant to his suitability for parole [citing §2402, subd. (d)(9)], and has both positive and realistic parole plans (see *In re Deluna*, supra, 2005 WL 268045, 5- Stable Relationships with others favor parole (15 CCR §2402 subd. (d)(9), All these factors favor his release. There is no evidence Petitioner now poses a risk of danger to society.

The Board's reasons finding petitioner unsuitable is unreasonable and an abuse of discretion enlight of the evidence presented to the Board by petitioner and the Department of Corrections and Rehabilitation Psychological Department and Counselor.

At the hearing, Correctional Counselor I, T. Verdasoto testified as to Petitioner's programming, and his future residence and employment when paroled:

**Therapy and Self-Help Activities:** Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir.

**Postconviction Factors:** Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/22/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While in Calipatria, he worked in the culinary, pre-voc. and Compute Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Meddium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification,



Close B was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

**Disciplinary History:** Plaza has reemained disciplinary free throughout his incarceration

**Residence:** Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr., Simi Valley, California 93063. His phone number is (805) 581-6323

**Employment:** Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone (805) 578-7303.

**Assessment:** In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing. (see Exhibit "B")

Dr. M. Macomber testified as to Petitioner's his current mental stability and his lack of present and future dangerous:

**Psychiatric and Medical History:** There is no

psychiatric history. There is no history of serious accidents or head injuries or seizures. His health is good.

**Current Mental Status/Treatment Needs:** Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts Degree. His grades are very good. Also, he has obtained a certificate as a home inspector from professional career institute in Georgia by correspondence. In addition, he has completed several courses toward self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job

success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

**Current Diagnostic Impression:** Axis I- Drug and alcohol use by history; Axis II- No personality disorder; Axis III- No physical disorder; Axis IV- Life term incarceration; Axis V- Current GAF: 95.

**Assessment of Dangerousness:** (A) In considering potential for dangerous behavior in the institution. Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time in prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it

was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

(B) In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

(C) At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this no longer is an issue. Therefore, there are no significant risk factors in this case.

**Clinician Observation/Comments/Reccomendations:** There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon release. He has very strong family support in the community. All these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All these factors indicate that his prognosis for successful adjustment in the community is excellent. (see Exhibit "C")

Petitioner asserts that the rehabilitative evidence submitted by Petitioner and both the life Evaluation report and Psychological report is supportive of release contrary to the Board's specious findings. the Biggs court addressed the Boards illegal usage of needed therapy and other illegal reasons to justify a highly illegal denial.

"The record in this case and the transcripts of Biggs hearing before the Board clearly show that many conclusions and factors relied on by the Board were devoid of evidentiary basis".

Petitioner submits that the record in this case is also devoid of evidentiary basis as to the Board's findings that evidence presented is not supportive of release, which violates due process. Petitioner further submits that despite the overwhelming evidence that Petitioner does not present a current risk to public safety. The Board arbitrarily found petitioner unsuitable for release. Petitioner asserts that the real reason given by the Board indicative of unsuitability is the commitment offense, and if allowed to identify the unchanging circumstances as indicative of unsuitability, this would put Petitioner in an impossible situation, where no matter what he shows in terms of positive behavior, reformation, self-help, work skills, parole plans, on just rehabilitation in general, he would never be able to overcome the unchanging facts of the crime. The only logical application of constitutional due process dictates what the Court in **Irons v. Warden**, 358 F.supp.2d 936, 947, (E.D.Cal. 2005) held,

,i.e., that any denial requires the presence of some in-prison behavior showing that the inmate **currently** presents an unreasonable risk of danger if paroled.

Here the facts of the crime have been the only real reason for denying parole. yet, those facts have never been tied to **current** behavior showing that Petitioner still presents an unreasonable risk at this time. A rule requiring the presence of in-prison adverse behavior to justify a denial based on the crime simply recognizes what the 9th Circuit in **Biggs** alluded to when it talked of the rehabilitative goals of the system, and the need to take into consideration that a person can rehabilitate themselves. This seems to be missing from the Board's current agenda and policy. This denies to Petitioner the process to which he is constitutionally due.

At this point, Petitioner has been incarcerated over 23 years (including pre- & post-conviction credit). His programming clearly shows his full rehabilitation. In drawing the line as to when a denial becomes arbitrary, that line has definitely been crossed in this case, as the Board cannot present factual findings showing a continued risk of danger based on the rehabilitative evidence presented. To the contrary, the in-prison facts are exclusively positive.

As **Ramirez** noted (**Ramirez**, 94 Cal.App.4th at 549), the paroling authority must do more than merely commend Petitioner for the hard work done to rehabilitate himself while in prison. They must actually consider these factors "as... circumstance[s] tending to show his suitability for parole." **Ramirez** supra 94 Cal.App.4th at 571-72 [emphasis in original]. Of course, all the

Board did with petitioner's extensive accomplishments was to brush them aside with several terse lines and issue superficial compliments. Obviously, no serious consideration was ever given to Petitioner's outstanding programming. Yet, the **Biggs** rule is clear that if an inmate "continue[s] to demonstrate exemplary behavior and evidence of rehabilitation, denying him a parole date simply because of the nature of [his] offense and prior conduct would raise serious questions involving his liberty interest in parole". **Biggs v. Terbune**, supra, 334 F.3d at 916. Here, the evidence of actual rehabilitation is beyond dispute.

The Boards inability to find anything in his current programming, demeanor or psychological condition to justify a finding of current dangerousness, the Board continuously falls back on the immutable and unchanging facts, of the crime, to base its findings of unsuitability.

Again as noted above, wherever one draws the line as to when the reliance on the unchanging facts of the commitment offense becomes a violation of due process in the abstract, under the facts here after 17 years, it clearly has passed here. Thus, the Board must do more than simply commend Petitioner for his efforts and accomplishments, and must consider them as favoring parole in evaluating suitability. **Ramirez**, supra, at 572. The Board must do this even if the factors of the commitment offense in the abstract can be said to be sufficient to deny petitioner parole.

Petitioner asserts that he has continued to be a **model** inmate, yet, continues to be deprived the benefits of his exemplary rehabilitation by the California Board of Parole



Hearings. The only real issue at a parole hearing is whether the inmate **currently** poses an unreasonable risk of danger to the public if paroled. This must be determined by an inmates post-conviction evidence of rehabilitation. petitioner has met every prerequisites condition that warrants a finding of suitability. Because there is no evidence to support a finding that Petitioner poses a current threat to public safety of any magnitude, let alone an unreasonable level of threat, the decision denying parole can not be sustained.

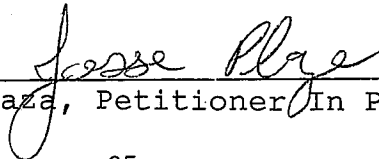
#### CONCLUSION

The Parole Board's decision was arbitrary and capricious. Petitioner did not receive fair hearing from the Board of Parole Hearings, nor will he ever.

The Court must order Petitioner released or at the very least, direct the Board of Parole Hearings to issue a decision within ten days granting Petitioner parole, setting his term as prescribed by the Legislature and the Statutes.

Based on the foregoing reasons and the entire file herein, Petitioner submits that the hearing was a sham and a farce in violation of the intent of the Legislature when it enacted Penal Code §3041 et seq. 30 years ago.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 15 day of FEBRUARY 2007, Correctional Training Facility, Soledad, Ca 93960-0689.

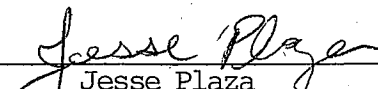
  
\_\_\_\_\_  
Jesse Plaza, Petitioner In Pro Per

PRAYER FOR RELIEF

1. Issue an Order to Show Cause on an expedited basis directing Respondent to file a Return pursuant to Rule 4.551, California Rules of Court;
2. Issue a Writ of Habeas Corpus;
3. Order Respondent to provide Petitioner with reasonable discovery;
4. Conduct an Evidentiary Hearing;
5. Declare the rights of the parties;
6. Order injunctive relief;
7. Appoint Counsel;
8. Issue an order directing Petitioner released on parole;
9. Direct Respondent to release Petitioner forthwith upon the granting of his release on parole;
10. Issue an Order directing Petitioner released on his own recognizance or on reasonable bail; and
11. Grant all other relief necessary to promote the ends of justice.

Dated: 2-15-07

Respectfully submitted

  
Jesse Plaza

In Pro per

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):  
California Court of Appeals
- b. Result: denied c. Date of decision: unknown
- d. Case number or citation of opinion, if known: unknown
- e. Issues raised: (1) n/a  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_
- f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:  
unknown
9. Did you seek review in the California Supreme Court? ☒ Yes. ☐ No. If yes, give the following information:
- a. Result: denied b. Date of decision: unknown
- c. Case number or citation of opinion, if known: unknown
- d. Issues raised: (1) n/a  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:  
n/a
11. Administrative Review:
- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:  
As of May 1, 2004, Exhaustion of the Administrative Appeal Process has been  
eliminated. Title 15 regulations governing section 2050-2056 has been repealed.
- b. Did you seek the highest level of administrative review available? ☒ Yes. ☐ No.  
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. a. (1) Name of court: n/a
- (2) Nature of proceeding (for example, "habeas corpus petition"): \_\_\_\_\_
- (3) Issues raised: (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (4) Result (Attach order or explain why unavailable): \_\_\_\_\_
- (5) Date of decision: \_\_\_\_\_
- b. (1) Name of court: n/a
- (2) Nature of proceeding: \_\_\_\_\_
- (3) Issues raised: (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (4) Result (Attach order or explain why unavailable): \_\_\_\_\_
- (5) Date of decision: \_\_\_\_\_
- c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

n/a

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

2-15-07



Jesse Blazer  
(SIGNATURE OF PETITIONER)

**PROOF OF SERVICE BY MAIL  
BY PERSON IN STATE CUSTODY**  
(C.C.P. §§ 1013(A), 2015,5)

I, JESSE PLAZA, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

JESSE PLAZA, CDCR #: H-12371  
CORRECTIONAL TRAINING FACILITY  
P.O. BOX 689, CELL #: F-338U  
SOLEDAD, CA 93960-0689.

On FEB. 18, 2007, I served the attached:

---

PETITION FOR WRIT OF HABEAS CORPUS

---

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

LOS ANGELES SUPERIOR COURT  
CRIMINAL COURT BUILDING  
210 W. Temple Street  
Los Angeles, CA 90012

OFFICE OF THE ATTORNEY GENERAL  
RONALD REAGAN BUILDING  
300 S. Spring Street  
Los Angeles, CA 90099-9126

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 2-15-07.

Jesse Plaza  
Declarant

# EXHIBIT A

INITIAL PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life )  
Term Parole Consideration )  
Hearing of: )

CDC Number H-12371

JESUS PLAZA )  
\_\_\_\_\_) )  
\_\_\_\_\_)

**INMATE  
COPY**

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

MAY 1, 2006

PANEL PRESENT:

ARCHIE JOE BIGGERS, Presiding Commissioner  
ROLANDO MEJIA, Deputy Commissioner

OTHERS PRESENT:

JESUS PLAZA, Inmate  
LAWRENCE MORRISON, Deputy District Attorney  
KATERA E. RUTLEDGE, Attorney for Inmate

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Ruby M. Dougherty, Peters Shorthand Reporting

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--oOo--



1

P R O C E E D I N G S

1

2

DEPUTY COMMISSIONER MEJIA: We're on

3

record.

4

PRESIDING COMMISSIONER BIGGERS: Okay.

5

This is initial parole consideration hearing for

6

Jesus Plaza, P-L-A-Z-A, CDC No. H-12371. We're

7

located at the Correctional Training Facility in

8

Soledad. Inmate was received on October 9, 1991

9

from Los Angeles County. The life term began on

10

October 9, 1991 and the minimum eligible parole

11

date is January 25th, 2007. The controlling

12

offense for which the inmate has been committed

13

is murder case number -- first-degree murder

14

with a weapon. Case No. is VA004108. That's a

15

violation on criminal code PC187. The inmate

16

received a term of 25 years to life, with a

17

minimum eligible parole date of 1/25/07. Now

18

this hearing's being tape-recorded and for the

19

purpose of voice-identification each of us will

20

state our first and last name, spelling our last

21

name. When we get to you Mr. Plaza, if you

22

would please give us your CDC number after you

23

spell your last name. I will start and move to

24

my left. My name is Archie Joe Biggers,

25

B-I-G-G-E-R-S, and I'm a Commissioner.

26

DEPUTY COMMISSIONER MEJIA: Rolando

27

Mejia, M-E-J-I-A, Deputy Commissioner.

1           DEPUTY DISTRICT ATTORNEY MORRISON:

2   Lawrence Morrison, M-O-R-R-I-S-O-N, Los Angeles  
3   District Attorney.

4           ATTORNEY RUTLEDGE:   Katera E. Rutledge,  
5   R-U-T-L-E-D-G-E, attorney for Mr. Plaza.

6           INMATE PLAZA:   My name is Jesus Plaza,  
7   last -- CDC number is H-12371.

8   [Recording equipment malfunction, placement of  
9   equipment, background noise, and volume of  
10 participants resulted in indiscernible content.]

11          PRESIDING COMMISSIONER BIGGERS:   Okay.  
12 Thanks to all of you.   Mr. Perez is there an ADA  
13 statement that was passed over there to you?   Do  
14 you see that?   It should have been right next  
15 to--

16          INMATE PLAZA:   (Indiscernible).

17          PRESIDING COMMISSIONER BIGGERS:   -- would  
18 you please read that out loud for us?

19          INMATE PLAZA:   "The Americans with  
20 Disability Act, ADA, is a law to  
21 help people with disabilities.  
22 Disabilities are problems that  
23 make it harder for some people to  
24 see, hear, breathe, talk, walk,  
25 learn, think, work, or take care  
26 of themselves than it is for  
27 others.   Nobody can be kept out of

1 public places or activities  
2 because of a disability. If you  
3 have a disability you have the  
4 right to ask for help to get ready  
5 for your BPT hearing, get to the  
6 hearing, talk, read forms and  
7 papers, and understand the hearing  
8 process. BPT will look at what  
9 you ask for to make sure that you  
10 have a disability that is covered  
11 by the ADA, and that you have  
12 asked for the right kind of help.  
13 If you do not get help or if you  
14 don't think you got the kind of  
15 help you need, ask for a BPT 1074  
16 Grievance Form. You can also get  
17 help to fill it out."

18 PRESIDING COMMISSIONER BIGGERS: All  
19 right. Do you understand what that means Mr.  
20 Plaza?

21 INMATE PLAZA: Yes, I do.

22 PRESIDING COMMISSIONER BIGGERS: And what  
23 does it mean in your own words please.

24 INMATE PLAZA: In my own words I believe  
25 it's saying if I have any disability or need  
26 help during this hearing I have the right to  
27 have those provided for me.

1           PRESIDING COMMISSIONER BIGGERS:

2   (Indiscernible) we're talking about things like  
3   hearing, eye -- do you wear glasses?

4           INMATE PLAZA:   No.

5           PRESIDING COMMISSIONER BIGGERS:   Okay.  
6   Do you have any hearing impairment?

7           INMATE PLAZA:   No, I don't.

8           PRESIDING COMMISSIONER BIGGERS:   And you  
9   can walk without any problems?

10          INMATE PLAZA:   Yes.

11          PRESIDING COMMISSIONER BIGGERS:   Okay.  
12   Have you ever been included in the Triple CMS or  
13   EOP Program?

14          INMATE PLAZA:   Never.

15          PRESIDING COMMISSIONER BIGGERS:   Okay.  
16   So you don't suffer from any disability that  
17   would prevent you from participating in today's  
18   hearing?

19          INMATE PLAZA:   Not at all.

20          PRESIDING COMMISSIONER BIGGERS:   Counsel,  
21   do you feel that your client's ADA rights have  
22   been met?   Ms. Rutledge?

23          ATTORNEY RUTLEDGE:   Yes, Sir.

24          PRESIDING COMMISSIONER BIGGERS:   Thank  
25   you.   This hearing is being conducted pursuant  
26   to Penal Code Section 3041 and 3042 and the  
27   rules and regulations of the Board of Prison

1 Terms governing parole consideration hearings  
2 for life inmates. The purpose of today's  
3 hearing is to consider the number and the nature  
4 of the crimes you were committed for, your prior  
5 criminal and social history, your behavior and  
6 programming since your commitment. We have had  
7 the opportunity to review your Central File, and  
8 you will be given the opportunity to correct or  
9 clarify the record. We will reach a decision  
10 today, and find -- and inform you whether or not  
11 we find you suitable for parole and the reasons  
12 for our decision. If you are found suitable for  
13 parole, the length of your confinement will be  
14 explained to you. Before we go any further, I  
15 want to advise you that we expect you to be  
16 fully honest with us today, especially with this  
17 being your initial hearing. So in the event  
18 that you don't get a date today, this here will  
19 form the foundation for all future hearings.

20 INMATE PLAZA: I (indiscernible).

21 PRESIDING COMMISSIONER BIGGERS: Any  
22 false statement you make today could have an  
23 adverse effect on your ability to get a date at  
24 a later time in the event that you don't get a  
25 date today. Nothing that happens here today  
26 will change the findings of the Court. We are  
27 not here to retry your case. We are here to

1 determine if you are suitable for parole. Do  
2 you understand that?

3 **INMATE PLAZA:** I understand.

4 **PRESIDING COMMISSIONER BIGGERS:** The  
5 hearing will be conducted in two phases. I will  
6 discuss with you the crime you were committed  
7 for, your prior criminal and social history.  
8 Deputy Commissioner Mejia will talk to your  
9 about parole plans, letters of support and  
10 opposition, your counselor's report and your  
11 psychological evaluation. Once that is  
12 concluded, both Commissioners, the District  
13 Attorney, and your attorney will ask you  
14 questions. Questions from the District Attorney  
15 shall be asked through the Panel and your  
16 answers should be directed to the Panel. Before  
17 we recess for deliberation, the District  
18 Attorney, your attorney, and you will be given  
19 the opportunity to make a final statement  
20 regarding your suitability, followed by  
21 statements -- if we had victims, it would be --  
22 (indiscernible) follow with the victims, but  
23 since we don't have any we don't worry about  
24 that one. California Code of Regulations states  
25 that regardless of time served a life inmate  
26 shall be found unsuitable for and denied parole  
27 if in the judgment of the Panel the inmate would

1 pose an unreasonable risk of danger to society  
2 if released from prison. You have certain  
3 rights. Those rights include the right to a  
4 timely notice of this hearing, the right to  
5 review your Central File. Did you review your  
6 Central File?

7 INMATE PLAZA: Yes.

8 PRESIDING COMMISSIONER BIGGERS: And the  
9 right to present relevant documents. Ms.  
10 Rutledge, do you believe that your client's  
11 rights have been met.

12 ATTORNEY RUTLEDGE: Yes.

13 PRESIDING COMMISSIONER BIGGERS: Okay.  
14 Thank you, ma'am. You have an additional right  
15 to be heard by an impartial Panel. Do you have  
16 any objection to the Panel members?

17 INMATE PLAZA: No, none at all.

18 PRESIDING COMMISSIONER BIGGERS: Okay.  
19 All right. I'm going to ask Ms. Rutledge, do  
20 you have any objections to the Panel  
21 (indiscernible)?

22 ATTORNEY RUTLEDGE: No, Sir.

23 PRESIDING COMMISSIONER BIGGERS: Thank  
24 you. You will receive a written copy of our  
25 tentative decision today. That decision becomes  
26 effective within 120 days. A copy of the  
27 decision and a copy of the transcript will be

1 sent to you, and you will have 90 days from that  
2 date to appeal if you so desire. Now, I need to  
3 let you know that the Board has eliminated its  
4 appeals process. If you disagree with anything  
5 that happens in today's hearing, you have the  
6 right to go directly to the Court with your  
7 complaint.

8 INMATE PLAZA: I understand.

9 PRESIDING COMMISSIONER BIGGERS: Okay,  
10 thank you. You are not required to admit your  
11 offense or discuss your offense. However, this  
12 Panel does accept the findings of the Court to  
13 be true. Do you understand that?

14 INMATE PLAZA: Yes, I (indiscernible).

15 PRESIDING COMMISSIONER BIGGERS: Okay,  
16 thank you. I'm gonna pass a -- over to your  
17 attorney and then to the District Attorney what  
18 I've have marked as Exhibit One so that we can  
19 make sure that we're all using -- on the same  
20 set of documents.

21 DEPUTY DISTRICT ATTORNEY MORRISON:

22 District Attorney has all the documents, thank  
23 you.

24 ATTORNEY RUTLEDGE: The -- Mr. Plaza, the  
25 defense has all (indiscernible).

26 PRESIDING COMMISSIONER BIGGERS: Thank  
27 you, ma'am. Thank you, sir. Commissioner



1 Mejia, is there any confidential material in the  
2 file?

3 DEPUTY COMMISSIONER MEJIA: No. No  
4 confidential information.

5 PRESIDING COMMISSIONER BIGGERS: Okay.  
6 Are any additional documents to be submitted?

7 ATTORNEY RUTLEDGE: I (indiscernible) we  
8 did submit --

9 PRESIDING COMMISSIONER BIGGERS: And I  
10 read those (indiscernible) read the statement  
11 into the record, because I want to make sure it  
12 he gets into the record. I read, I think it was  
13 the last two pages that had to do with matrix  
14 and all the other stuff in there -- but I -- and  
15 I -- but want to get it on record, so -- to  
16 make sure that it is in the transcript.

17 ATTORNEY RUTLEDGE: Do you want me to  
18 read it or him to do that?

19 PRESIDING COMMISSIONER BIGGERS: It  
20 doesn't matter, which ever you prefer.

21 ATTORNEY RUTLEDGE: This was taken from  
22 -- Mr. Plaza had submitted to the Board a  
23 memorandum of evidence and law in support of  
24 parole suitability and this is directed to the  
25 Board.

26 "Introduction, the California Code  
27 of Regulations Title XV Division

1 Two hereafter XV Section 2245,  
2 states in part, 'The prisoner is  
3 responsible for bringing to the  
4 attention of the hearing Panel any  
5 issues pertaining to his rights  
6 under this article or any failure  
7 to comply with these rules. A  
8 prison may waive any of these  
9 rights. Any such waiver shall be  
10 documented.' I wish to bring to  
11 the attention of this Panel at  
12 this time that I do have the right  
13 to present this document at this  
14 hearing to have it entered into  
15 the record. Moreover, the Panel  
16 must --"

17 That's moot since the Panel's accepting it. Is  
18 that correct?

19 DEPUTY COMMISSIONER MEJIA: Yes, it is.

20 ATTORNEY RUTLEDGE: Okay. In the third  
21 paragraph, my client submits this memorandum  
22 because he does not wish to intentionally or  
23 unintentionally waive any of his rights under  
24 the law, and that he wants that all evidence in  
25 support of finding suitability be stated for the  
26 records and for purposes of appeal if necessary.

27 PRESIDING COMMISSIONER BIGGERS: Before

11

1 you go any further. Normally, everything that  
2 we do, that's why it's on record. So, I just  
3 want to make sure that you now understand that  
4 we -- our job is to make sure that we do  
5 everything under due process and we are aware of  
6 everything that happens in Title XV.

7 **INMATE PLAZA:** That's right.

8 **PRESIDING COMMISSIONER BIGGERS:** Okay?

9 So, go ahead, ma'am, please.

10 **ATTORNEY RUTLEDGE:** Moving on to the  
11 memorandum incorporates the following -- relies  
12 upon the Court rulings.

13 "InRe Rosencrance,  
14 (indiscernible); InRe Rosencrance  
15 for LA County Superior Court, Case  
16 No. AH10298; InRe Caswald,  
17 210DJDJR10845; InRe McWillion,  
18 U.S. Court of Appeals for the 9th  
19 Circuit, Case No. 0055182; InRe  
20 Ramirez, 9th Circuit Court of  
21 Appeals, Case No. A0092699; InRe  
22 Biggs, U. S. Court of Appeals,  
23 Case No. VH002016; InRe Deluna,  
24 126 Appellate Court, 585; InRe  
25 Low, 130 Appellate Court, 1418 --"

26 **PRESIDING COMMISSIONER BIGGERS:** Excuse  
27 me, what was that? What was the -- what's the

1 relation of the Low case in this hearing?

2           **ATTORNEY RUTLEDGE:** How are we applying  
3 the Low case to this hearing? This is being  
4 presented by my client; I have not read the Low  
5 case.

6           **DEPUTY DISTRICT ATTORNEY MORRISON:** Well,  
7 I have a -- I have a question (indiscernible) if  
8 I may. The inmate can present anything he  
9 wants, but this sounds like legal arguments.  
10 The inmate has an attorney -- he's gonna have an  
11 attorney -- he can make whatever arguments he  
12 wants if he gonna represent himself then he can  
13 make legal arguments. But he doesn't get to  
14 make legal arguments and have an attorney.

15           **ATTORNEY RUTLEDGE:** Yes, he does.  
16 There's nothing -- sometimes he can have an  
17 attorney --

18           **PRESIDING COMMISSIONER BIGGERS:** Excuse  
19 me. What I'm doing right now is allowing him to  
20 read his document into the file. When we start  
21 talking about the opposing statements and  
22 getting into all the others, then that's when I  
23 will put a stop to that. But I want to get this  
24 in the file, and I have something to say once  
25 you finish.

26           **ATTORNEY RUTLEDGE:** And I would -- I  
27 would remind the Panel that under Title XV the

1 people have no standing to object to anything  
2 that the inmate does.

3 PRESIDING COMMISSIONER BIGGERS: Exactly.

4 ATTORNEY RUTLEDGE: Thank you. All  
5 right. So -- "InRe Shapudis, 135 Appellate  
6 Forth 217 at 227; Irons versus Carey 408 F  
7 Third, 1165 9th Circuit." Now Page Two goes to  
8 the commitment offense so --

9 PRESIDING COMMISSIONER BIGGERS: You can  
10 skip that one. In fact, I think you can skip  
11 the last three pages, I just wanted to get those  
12 things on the record for you (indiscernible)  
13 others because what I wanted to let you know sir  
14 is that those cases are a matter of law, and you  
15 can use those any times when you appeal if for  
16 some reason you don't get a date. But there are  
17 a couple that you forgot to mention. One of  
18 those is Dannenberg, and we'll talk about that a  
19 little later on. I would appreciate -- I think  
20 you've done a superb job of putting this package  
21 together. My only comment on that is I think  
22 sometimes that you don't who. -- by going in  
23 there and doing certain things, there's a  
24 difference between shall, will, and can't.

25 INMATE PLAZA: I understand.

26 PRESIDING COMMISSIONER BIGGERS: Okay.

27 So. All right.

1           **ATTORNEY RUTLEDGE:** Can I -- there's an  
2 -- I still have to lodge a couple of objections  
3 whenever the Panels --

4           **PRESIDING COMMISSIONER BIGGERS:** No  
5 problem. So those are the additional documents.  
6 Now, you say you have some preliminary  
7 objections? What are they now?

8           **ATTORNEY RUTLEDGE:** Well, our first  
9 objection would be -- well, we would ask that  
10 the Panel -- under 2236 my client will be  
11 discussing everything but the commitment offense  
12 with the Panel. We ask that the people not be  
13 allowed to refer to him not discussing the case,  
14 and that again we're just reiterating that the  
15 people don't have standing to object to any of  
16 our statements and may not advise the Panel on  
17 the law, and that would be all aside from what  
18 would be in the package.

19           **DEPUTY DISTRICT ATTORNEY MORRISON:**  
20 (Indiscernible) recommend that (indiscernible)  
21 represents the citizen of Los Angeles, it's part  
22 of public comment that we're entitled to make on  
23 any subject regarding suitability for parole.

24           **ATTORNEY RUTLEDGE:** You can during your  
25 closing. Other than that you have no standing.

26           **PRESIDING COMMISSIONER BIGGERS:** She's  
27 right about that. You do have the right to do

1 that in Closing Statements (indiscernible). He  
2 can in fact though ask questions. If your  
3 client elects not to answer them that's  
4 something entirely different, but he does have  
5 the right to ask questions as well.

6 ATTORNEY RUTLEDGE: Of my client,  
7 correct. Yes. Okay.

8 PRESIDING COMMISSIONER BIGGERS: Are  
9 there any other preliminary objections?

10 ATTORNEY RUTLEDGE: No, Sir.

11 PRESIDING COMMISSIONER BIGGERS: Okay. I  
12 assume from what you just told me that the  
13 inmate will be speaking to us about everything  
14 but the crime?

15 ATTORNEY RUTLEDGE: Yes.

16 PRESIDING COMMISSIONER BIGGERS: Okay.  
17 Would you raise your right hand please, Mr.  
18 Plaza. Do you solemnly swear or affirm that the  
19 testimony you give at this hearing will be the  
20 truth and nothing but the truth?

21 INMATE PLAZA: I do.

22 PRESIDING COMMISSIONER BIGGERS: Thank  
23 you. I'm gonna read into the record from the  
24 Appellate decision the facts of the committing  
25 offense.

26 "On May 26, 1990, Mr. Plaza was an  
27 active member of the King Cobra

16

1 juvenile gang. (Indiscernible)

2 Silva, S-I-L-V-A, Mr. Plaza's

3 co-arrestee was also an active

4 member of the King Cobras.

5 Patrick Littlebull,

6 L-I-T-T-L-E-B-U-L-L, the victim,

7 was a member of the Bell Garden

8 (phonetic) --" is that local --

9 INMATE PLAZA: It's always been

10 miss-spelled, but it's supposed to be locos as

11 in crazy.

12 PRESIDING COMMISSIONER BIGGERS: Locos.

13 INMATE PLAZA: Locos.

14 PRESIDING COMMISSIONER BIGGERS: Locos.

15 INMATE PLAZA: Yeah.

16 PRESIDING COMMISSIONER BIGGERS: Okay.

17 "-- a rival juvenile gang. Fifty-nine hundred

18 block of Loveless (phonetic) Street was a known

19 hangout of the Bell Garden Locos."

20 INMATE PLAZA: There you go.

21 PRESIDING COMMISSIONER BIGGERS: "On May

22 26, 1990 at around 10:00 p.m.

23 Rosario Quevedo, Q-U-E-V-E-D-O,

24 and her sister, Martha -- and I'll

25 spell the last name --

26 P-A-L-A-C-I-O-S, returned from

27 church with their children and



1 parked their car in front of their  
2 apartment at 5940 Loveless Street.  
3 Quevedo, Q-U-E-V-E-D-O, noticed  
4 some individuals standing and  
5 talking to each other on the  
6 sidewalk in front of the car. She  
7 also saw a car approaching from  
8 the opposite direction with its  
9 lights off and stop across the  
10 street. Rosario and Palatono --  
11 P-A-L-A-C-I-O-S -- then heard  
12 gunshots. Quevedo panicked and  
13 drove away. When they returned a  
14 short time later, they saw the  
15 victim lying face down in the  
16 street in front of the apartment  
17 building. Jesus Zamora,  
18 Z-A-M-O-R-A, made a pizza delivery  
19 for Dominoes Pizza about 10:00  
20 p.m. that evening at 5918 Loveless  
21 Street. After delivering the  
22 pizza he pulled into the driveway  
23 at 5918 Loveless Street to write  
24 in his delivery book. As he was  
25 writing, he heard the sound of  
26 gunfire and the sound of a car  
27 coming rapidly in his direction.

1 He saw a car traveling on Loveless  
2 Street without the headlights on.  
3 The car passed Zamora and turned  
4 the car, straddling the curve.  
5 The lights of the car then came  
6 on, and Zamora saw the number 33  
7 on the license plate. He also  
8 noted that the car was a gray  
9 Caprice. He later related his  
10 observations to Bell Garden Police  
11 Officer Reuben Musquiz,  
12 M-U-S-Q-U-I-Z. Officer Musquiz  
13 then broadcast a description of  
14 the gray Caprice over the police  
15 radio. Around 10:50 p.m., Bell  
16 Police Officer Baley Hooper,  
17 H-O-O-P-E-R, observed a silver  
18 Caprice with 33 on it as the last  
19 two numbers on the license plate."  
20 And then I'm going to skip down and say -- well,  
21 let me read this in too.  
22 "-- proceeded westbound on  
23 Florence Avenue near the 710  
24 Freeway bridge. He radioed for  
25 assistance and followed the car  
26 into a driveway. Plaza, who was  
27 driving, and passenger Danny Silva

1 exit the vehicle. They were  
2 detained and subsequently  
3 arrested. Brown paper bags were  
4 placed on the hands of Plaza and  
5 Silva so they -- that they -- be  
6 tested for gunshot residue.  
7 Analysis residue from a pellet in  
8 Silva's hand indicate that Plaza  
9 and Silva had either shot a gun,  
10 handled a gun, or had been within  
11 with two (indiscernible) feet of a  
12 gun as it was fired."  
13 Okay. That's enough for the record. And since  
14 you're not gonna be talking about the crime  
15 itself -- and counsel if I touch on an area that  
16 you want to object to, that's fine, I need to  
17 ask a couple of things though. At one time you  
18 denied your involvement.

19 INMATE PLAZA: Yes.

20 PRESIDING COMMISSIONER BIGGERS: Okay.  
21 When did you change that?

22 INMATE PLAZA: I'd have to say about an  
23 hour into the interrogation.

24 PRESIDING COMMISSIONER BIGGERS: An hour  
25 into the interrogation?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: Well, I

1 was looking at the Appellate Decision and it  
2 indicated -- I thought it looked like it was a  
3 little bit longer than that.

4 **ATTORNEY RUTLEDGE:** He maintains he was  
5 the driver of the vehicle, and they never --  
6 there were two people. Both people found in the  
7 car had gunshot residue. There was a third  
8 person that was never tried.

9 **PRESIDING COMMISSIONER BIGGERS:** Never  
10 tried, but yeah there were two. The two that  
11 had the residue was Mr. Plaza and Mr. Silva; is  
12 that correct?

13 **INMATE PLAZA:** That's correct.

14 **PRESIDING COMMISSIONER BIGGERS:** Okay.  
15 Can you tell me how you got the residue on your  
16 hands?

17 **INMATE PLAZA:** Yes, I handled the gun  
18 after it was fired plus I was in the vicinity of  
19 the shots being fired.

20 **PRESIDING COMMISSIONER BIGGERS:** Within  
21 two to four feet is what you're saying?

22 **INMATE PLAZA:** Yes, Sir.

23 **ATTORNEY RUTLEDGE:** Okay, I think we're  
24 getting into the commitment offense --

25 **PRESIDING COMMISSIONER BIGGERS:** Okay.  
26 At one time you talked about the (indiscernible)  
27 you requested it be turned to a manslaughter

1 (indiscernible), right?

2 INMATE PLAZA: My lawyer did, yes.

3 PRESIDING COMMISSIONER BIGGERS: Yes.

4 And that was shot down by the Appellate  
5 Decision. Are you still a member of that King  
6 Cobra gang?

7 INMATE PLAZA: I was never technically a  
8 member, but I was an associate. I hung around  
9 with gang members, to be totally honest. I hung  
10 around with several different gang members.  
11 People that I hung around with were from  
12 different gangs.

13 ATTORNEY RUTLEDGE: (Indiscernible).

14 INMATE PLAZA: Oh, being born and raised  
15 in East LA there's gangs all around.

16 PRESIDING COMMISSIONER BIGGERS: Yeah,  
17 there are -- some gangs are not as violent as  
18 others. There are some gangs that are just  
19 locals that hang out, too.

20 INMATE PLAZA: Not that I know of.

21 PRESIDING COMMISSIONER BIGGERS: Okay.  
22 Well, I'm familiar with LA. Not all of them are  
23 Bloods, Crips, or whatever names that they have.  
24 You indicated that you have spent a lot of time  
25 hanging around those people. Were you aware  
26 that -- well, that's getting back into the  
27 crime. Were you aware that -- the night in

1 question, were you in with some of those known  
2 gang members?

3 INMATE PLAZA: Yes.

4 PRESIDING COMMISSIONER BIGGERS: Did you  
5 have any idea what was going to take place?

6 ATTORNEY RUTLEDGE: We would -- that  
7 would -- sorry, I have to object to --

8 PRESIDING COMMISSIONER BIGGERS: All  
9 right.

10 ATTORNEY RUTLEDGE: But we would accept  
11 the --

12 PRESIDING COMMISSIONER BIGGERS: Findings  
13 of the

14 ATTORNEY RUTLEDGE: -- Appellate --

15 PRESIDING COMMISSIONER BIGGERS:

16 Appellate Decision. Okay.

17 ATTORNEY RUTLEDGE: Yes.

18 PRESIDING COMMISSIONER BIGGERS: All  
19 right. Then I will go and just look and see  
20 what else I think is -- talking about your  
21 priors.

22 DEPUTY DISTRICT ATTORNEY MORRISON:

23 Excuse me, Commissioner. I'm sorry, I may have  
24 missed it with all of this discussion. But did  
25 the Chair read the official version of the crime  
26 into the --

27 PRESIDING COMMISSIONER BIGGERS: I read

1 it from the Appellate Decision. Yes, it is.

2 DEPUTY DISTRICT ATTORNEY MORRISON:

3 Because the Appellate Decision is pretty  
4 lengthy.

5 PRESIDING COMMISSIONER BIGGERS: Yeah,  
6 and I read that in --

7 DEPUTY DISTRICT ATTORNEY MORRISON:

8 That's right. Okay.

9 ATTORNEY RUTLEDGE: It's probably why you  
10 fell asleep during that part.

11 PRESIDING COMMISSIONER BIGGERS: All  
12 right -- we're not going to have that now.

13 ATTORNEY RUTLEDGE: Just teasing.

14 PRESIDING COMMISSIONER BIGGERS: I know.  
15 We're going to keep everything on the up and up  
16 here. Okay. And did you have a juvenile  
17 history, because when I went through this I  
18 couldn't find anything. It says not available  
19 to Probation Department as far as five years  
20 after that. Did you have any juvenile history?

21 INMATE PLAZA: (Indiscernible).

22 PRESIDING COMMISSIONER BIGGERS: And the  
23 only adult history that you had was -- you were  
24 given 24 months probation for some vandalism --

25 INMATE PLAZA: Yes.

26 PRESIDING COMMISSIONER BIGGERS: What was  
27 that about?

1           INMATE PLAZA: I was arrested for  
2 vandalizing a store -- store property.

3           PRESIDING COMMISSIONER BIGGERS: Why did  
4 you do that?

5           INMATE PLAZA: To be honest with you, I  
6 was walking down the street, I was intoxicated,  
7 I seen the can sitting on the floor, I picked it  
8 up, what made we think I wanted to know what  
9 color it was I really am not sure today while I  
10 did that, but I did spray a one-inch diameter  
11 dot on the wall to see what color the can was  
12 and that's what I was arrested for -- a one-inch  
13 diameter dot on the wall.

14          PRESIDING COMMISSIONER BIGGERS: And they  
15 gave you two-years probation for that?

16          INMATE PLAZA: Yes.

17          ATTORNEY RUTLEDGE: It's usually three  
18 years under the Penal Code.

19          PRESIDING COMMISSIONER BIGGERS: Yeah,  
20 but that -- there had to be some extenuating  
21 circumstances as to priors --

22          DEPUTY DISTRICT ATTORNEY MORRISON:  
23 Misdemeanor probation in LA County summary  
24 probation is frequently two years. Sometimes  
25 for a (indiscernible) it's only one year.

26          ATTORNEY RUTLEDGE: But under the Penal  
27 Code you don't have to justify three years. You



1 just give three years.

2 PRESIDING COMMISSIONER BIGGERS: Okay,  
3 well, my question to you -- was there anything  
4 else that led them to give you only two years?

5 INMATE PLAZA: I wouldn't know.

6 PRESIDING COMMISSIONER BIGGERS: Okay.  
7 Let's talk a little bit about your drug -- do  
8 you have -- do you have a drug history?

9 INMATE PLAZA: Yes, I do.

10 PRESIDING COMMISSIONER BIGGERS: Okay.  
11 And what was your drug of choice?

12 INMATE PLAZA: Cocaine.

13 PRESIDING COMMISSIONER BIGGERS: Cocaine.  
14 And it says that you began snorting cocaine  
15 three times a week at the age of 16 --

16 INMATE PLAZA: Yes.

17 PRESIDING COMMISSIONER BIGGERS: -- and  
18 you continued use of this of -- until age 18,  
19 and you stopped at age 20.

20 INMATE PLAZA: Actually that's incorrect.  
21 I never actually stopped. I just decreased for  
22 a minute, and then I just elevated up until the  
23 time I was arrested.

24 PRESIDING COMMISSIONER BIGGERS: Were you  
25 -- the night you were arrested were you involved  
26 in alcohol or cocaine or anything?

27 INMATE PLAZA: Both. Alcohol and

1 cocaine.

2           PRESIDING COMMISSIONER BIGGERS: When did  
3 you start using alcohol?

4           INMATE PLAZA: I'd say age 15.

5           PRESIDING COMMISSIONER BIGGERS: You were  
6 still living at home, were you not?

7           INMATE PLAZA: Yes, I was.

8           PRESIDING COMMISSIONER BIGGERS: Were  
9 your parents aware that you were using cocaine  
10 and getting involved in drinking?

11          INMATE PLAZA: No, not at all?

12          PRESIDING COMMISSIONER BIGGERS: How  
13 could you hide that?

14          INMATE PLAZA: Well, my father'd been  
15 gone since I was about four years old so he's  
16 not in the picture. My mother, due to trying to  
17 support me and my other siblings -- she worked  
18 -- usually she had -- numerous times she usually  
19 had two jobs at a time. She's work day and  
20 night, so by the time she'd get home I'd already  
21 be home in bed.

22          PRESIDING COMMISSIONER BIGGERS: Okay.  
23 Did you -- I'll get in your social here  
24 (indiscernible) in a few minutes. But I wanted  
25 to find out were you -- let me go back. You  
26 were talking about the cocaine usage. You  
27 started using it at an early age right?

1 INMATE PLAZA: Yes.

2 PRESIDING COMMISSIONER BIGGERS: How did  
3 you support yourself in getting that?

4 INMATE PLAZA: I had a job. I used to  
5 work after school through the Cedar Program.

6 PRESIDING COMMISSIONER BIGGERS: Cocaine  
7 is a fairly expensive drug, isn't it?

8 INMATE PLAZA: Yes, it is.

9 PRESIDING COMMISSIONER BIGGERS: Okay.  
10 Were you buying it on the street?

11 INMATE PLAZA: Yes, I was.

12 PRESIDING COMMISSIONER BIGGERS: Costing  
13 you a pretty penny to do that, wasn't it?

14 INMATE PLAZA: Yeah, pretty much all my  
15 money.

16 PRESIDING COMMISSIONER BIGGERS: Okay,  
17 and you still say that your parents did not know  
18 that you were doing this?

19 INMATE PLAZA: No, they didn't.

20 PRESIDING COMMISSIONER BIGGERS: How  
21 about alcohol? What was your drink of alcohol  
22 that you liked?

23 INMATE PLAZA: Mainly my drink was  
24 Miller.

25 PRESIDING COMMISSIONER BIGGERS: Miller?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: And you

1 would take that in conjunction with?

2 INMATE PLAZA: Well, the alcohol started  
3 off as a, you know, what they call a gateway  
4 drug. It was the beginning of alcohol which led  
5 me to the cocaine and that was pretty much the  
6 two main -- my two main choices of alcohol and  
7 drug of choice was cocaine.

8 PRESIDING COMMISSIONER BIGGERS: Okay.  
9 Under Social Factors, you were born on February  
10 the 7, 1965 to Caroline and Jessie (phonetic)  
11 Plaza.

12 INMATE PLAZA: I believe there's an  
13 addendum behind that -- there's a --

14 PRESIDING COMMISSIONER BIGGERS: Yeah,  
15 that said he was born on 3/7/65.

16 INMATE PLAZA: That's correct, yes.

17 PRESIDING COMMISSIONER BIGGERS: Then you  
18 got -- the marriage took place on 5/12/84.  
19 That's your marriage, right?

20 INMATE PLAZA: Yes.

21 PRESIDING COMMISSIONER BIGGERS: Getting  
22 back to your -- you've got four brothers -- four  
23 sisters and a brother?

24 INMATE PLAZA: Yes.

25 PRESIDING COMMISSIONER BIGGERS: Okay.  
26 Are they still -- are all of them still living?

27 INMATE PLAZA: Yes, the are.

1           PRESIDING COMMISSIONER BIGGERS: Is any  
2 of them incarcerated?

3           INMATE PLAZA: No. And also if I might  
4 add, two of -- the two youngest sisters are  
5 actually half-sisters. They're from my dad's  
6 second marriage.

7           PRESIDING COMMISSIONER BIGGERS: Okay.  
8 And your wife's name is --

9           INMATE PLAZA: Guadalupe.

10          PRESIDING COMMISSIONER BIGGERS:  
11 Guadalupe Falcon (phonetic)?

12          INMATE PLAZA: Yes.

13          PRESIDING COMMISSIONER BIGGERS: And you  
14 married on 5/7/84, and you have three children.

15          INMATE PLAZA: That should be 5/12.

16          PRESIDING COMMISSIONER BIGGERS: You have  
17 12 children?

18          INMATE PLAZA: No, no, I'm saying the  
19 date. It should be 5/12; you said 5/7.

20          PRESIDING COMMISSIONER BIGGERS: Five  
21 seven, and it should be 5/12.

22          INMATE PLAZA: It should be 5/12/84.

23          PRESIDING COMMISSIONER BIGGERS: Okay.

24 We'll make sure that that gets in to your  
25 official record regardless of what happens here.

26          INMATE PLAZA: What was the question --  
27 I'm sorry --

1           PRESIDING COMMISSIONER BIGGERS: Do you  
2 have three kids? Three kids?

3           INMATE PLAZA: Yes, three children.

4           PRESIDING COMMISSIONER BIGGERS: And, in  
5 going through your file I saw that there was a  
6 letter from your wife and I'm sure that  
7 Commissioner Mejia will get in to. Any problems  
8 with the marriage?

9           INMATE PLAZA: I'd be lying if I said no.  
10 Sure, we have problems. But I mean nothing that  
11 we haven't gotten through.

12           PRESIDING COMMISSIONER BIGGERS: Well,  
13 I'm talking about because of incarceration  
14 (indiscernible).

15           INMATE PLAZA: Oh, yeah, well sure, you  
16 know. It's been hard on her being the single  
17 mother herself now. It was hard on me not being  
18 there able to support her. When I first left, I  
19 was the main source of, you know, support for  
20 the house so when I first go incarcerated she  
21 pretty much had to take everything on and do  
22 everything on her own, you know, and she kind  
23 of, you know, she felt abandoned, you know, and  
24 she had every right to feel that way because she  
25 had to just take over the whole household.

26           PRESIDING COMMISSIONER BIGGERS: Did you  
27 think about that when you were associating with

# **EXHIBIT A**

## **Part 2 of 2**

31

1 these known gang members? That that possibility  
2 -- that that could happen?

3 INMATE PLAZA: At the time, no, because  
4 my -- my thought -- my thought process wasn't on  
5 responsibility. To me responsibility was, I had  
6 a job, I paid the bills, I put food on the  
7 table, there was a roof over their heads, they  
8 had clothes on their backs. I thought that was  
9 responsibility. I didn't realize that it was a  
10 lot more to responsibility than that.

11 PRESIDING COMMISSIONER BIGGERS: But you  
12 were still -- you still had your drug habit and  
13 everything else --

14 INMATE PLAZA: And work. Yeah, I, you  
15 know, I functioned, you know, to the -- to  
16 everyone else I seemed to function in a normal,  
17 you know, capacity, but of course it was, you  
18 know, things behind the scenes that nobody knew  
19 about.

20 PRESIDING COMMISSIONER BIGGERS: Okay.  
21 Commissioner, do you have any questions on this  
22 subject?

23 DEPUTY COMMISSIONER MEJIA: Yeah, maybe  
24 about the remorse (indiscernible).

25 PRESIDING COMMISSIONER BIGGERS: Go  
26 ahead.

27 DEPUTY COMMISSIONER MEJIA: How do you



1 feel about the man who was killed?

2           **INMATE PLAZA:** I'm -- in the case of the  
3 victim, I take full responsibly for the taking  
4 of his life. I can understand remorse. I've  
5 dealt with, you know, people dying around me in  
6 the past. It's not something that I'm new to.  
7 I understand that it not only affected him but  
8 it affected his family. It affected friends of  
9 his, society. I understand that technically we  
10 all -- we all have times in our lives when we  
11 wish we could turn back the clock but that's not  
12 possible. But I do take full responsibility for  
13 my actions.

14           **DEPUTY COMMISSIONER MEJIA:** How do you  
15 feel about the death of the victim; that's what  
16 I asked you.

17           **INMATE PLAZA:** The death of the victim?

18           **DEPUTY COMMISSIONER MEJIA:** Yeah, the  
19 human being that was killed. How do you feel  
20 about him being shot and being killed? I know  
21 all the peripheral that you said -- I  
22 (indiscernible) I want (indiscernible) how do  
23 you feel about him?

24           **INMATE PLAZA:** I'm very remorseful for  
25 the victim, for taking his life. He -- I'm very  
26 sorry that it happened. It was something that  
27 should not have happened. He didn't deserve

33

1 that, and I just can't -- I mean, there are no  
2 words that'll make it better or make it go away.

3 DEPUTY COMMISSIONER MEJIA:

4 (Indiscernible) that's it. I really don't have  
5 any questions.

6 PRESIDING COMMISSIONER BIGGERS: Okay.

7 Then I'll ask you to go into the Post Conviction  
8 Factors, please.

9 DEPUTY COMMISSIONER MEJIA: Okay. This  
10 is your initial parole consideration hearing Mr.  
11 Plaza, and your custody history is that you were  
12 initially accepted to the Wasco State Prison RC  
13 in 1991. You were transferred to California  
14 State Prison Folsom new facility in 1991,  
15 December. You were at Wasco in October, then  
16 December in 1991 you went to the Old Folsom  
17 (indiscernible). Then 2/21/1992, you went to  
18 CSP Calipatria, North and East. February of  
19 1994 you went to Lancaster, then 12/16/1997  
20 Avenal State Prison. And you went  
21 (indiscernible) in 1998 of March, CTF. You had  
22 a brief period of time in CMF for medical issues  
23 --

24 INMATE PLAZA: Correct.

25 DEPUTY COMMISSIONER MEJIA: And  
26 (indiscernible) you have several jobs, and the  
27 most recent job is the (indiscernible) Porter?

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: And you have  
3 an associate (indiscernible). During your  
4 incarceration you went to education  
5 (indiscernible) electronics -- vocational  
6 Electronics, Air Conditioning Refrigeration, Dry  
7 Cleaning, Plumbing. You were a Porter and also  
8 a Teacher's Aide, Infirmary Dental Assistant.  
9 And, you have a high school diploma that 1983.  
10 You have a 12.0 TABE score. (Indiscernible) you  
11 have completed 32 units out of the Coastline  
12 Community College?

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And, you -- I  
15 see that you have really attempted to get some  
16 trades -- completion of vocational trades. You  
17 have completed, I think, 19 certification units  
18 when it comes to Air Conditioning and  
19 Refrigeration?

20 INMATE PLAZA: I've completed the whole  
21 course.

22 DEPUTY COMMISSIONER MEJIA: You completed  
23 that whole course?

24 INMATE PLAZA: Yes.

25 DEPUTY COMMISSIONER MEJIA: That's a  
26 problem. I couldn't find a completion. I saw  
27 the Certificate of Completion for the -- each

1 unit that's a component to the Refrigeration.

2 So you do have it there?

3 INMATE PLAZA: I believe --

4 DEPUTY COMMISSIONER MEJIA: That would be

5 good for the record, because I -- I saw the

6 certifications units been completed

7 (indiscernible) and how about the Data

8 Processing? I saw that you have completed 22

9 such units also?

10 INMATE PLAZA: Yeah, that was not a total

11 completion --

12 DEPUTY COMMISSIONER MEJIA: So,

13 Vocational Air Conditioning and Refrigeration --

14 you completed this?

15 INMATE PLAZA: Yes.

16 DEPUTY COMMISSIONER MEJIA: Okay. That

17 is the documentation.

18 ATTORNEY RUTLEDGE: (Indiscernible).

19 DEPUTY COMMISSIONER MEJIA: You know,

20 well you said that you completed two trades but

21 I can't find them in the file.

22 INMATE PLAZA: Yes, I understand the last

23 -- '95. On one of my doc hearings -- I think

24 it's right here (indiscernible). At one of my

25 doc hearings, the Commissioner went through my

26 paperwork and verified finding the --

27 DEPUTY COMMISSIONER MEJIA: Do you have a

1 copy of that --

2 INMATE PLAZA: -- chrono and the  
3 certificate, but it is no longer in the file.  
4 No, I do not have a copy. It's no longer in the  
5 file, but the Commissioner did see it at one  
6 point in time.

7 DEPUTY COMMISSIONER MEJIA: I saw that,  
8 yeah. The doc -- was that Patterson --  
9 Commissioner Patterson?

10 ATTORNEY RUTLEDGE: It looks -- Robert  
11 Patterson, yeah. It looks to be his signature.

12 DEPUTY DISTRICT ATTORNEY MORRISON: This  
13 (indiscernible) is that a progress hearing or  
14 something?

15 PRESIDING COMMISSIONER BIGGERS: No --  
16 Documentation Hearing. Before they go through  
17 initial they give them (indiscernible).

18 DEPUTY COMMISSIONER MEJIA: I don't see  
19 any in here. I've checked. No, I know you  
20 counted -- I counted 19 units. I'm just  
21 surprised that you have all these documents; you  
22 don't have the -- I'm not saying that you're not  
23 telling the truth, but you're so organized about  
24 everything else. But the most important is what  
25 you have completed. All the cert units are  
26 there -- are there, and I know what you learned,  
27 but the completion certificate is the most

1 important because that will count as a --

2 INMATE PLAZA: I understand.

3 DEPUTY COMMISSIONER MEJIA: -- check

4 completed. And, I cannot depend on what the

5 Deputy Commissioner saw. Maybe he had the

6 mistake of easing certification of it or

7 completion of it. I look at your file, and it's

8 like I said, you've got everything else but I

9 can't see the completion. Even on the other,

10 you know your education progress reports.

11 Nothing says (indiscernible) that you completed,

12 but I'm giving you credit for 19 certification

13 units of Air Conditioning and Refrigeration.

14 You also took some vocational Dry Cleaning,

15 which you haven't completed --

16 INMATE PLAZA: It's also a completion.

17 DEPUTY COMMISSIONER MEJIA: Oh, yeah?

18 What year did you complete that?

19 INMATE PLAZA: I believe it's -- it's on

20 that same page or the one before.

21 DEPUTY COMMISSIONER MEJIA: I guess, I

22 think you should just bring me the completion

23 chrono.

24 INMATE PLAZA: I don't have them

25 ATTORNEY RUTLEDGE: Four ten '95 is what

26 he has noted here, 4/10/95.

27 INMATE PLAZA: The last time I went

1 through the Board that -- when Patterson went  
2 through the doc hearing -- when I went through  
3 the doc hearing with Patterson -- '95. I had  
4 the paperwork with me. When I hit Avenal I lost  
5 half of my property and since then I have not  
6 had --

7 **DEPUTY COMMISSIONER MEJIA:**

8 (Indiscernible) contact the vocational --  
9 education where you took it -- the prison where  
10 you took it, and ask for a copy of the  
11 completion chrono or something to prove that you  
12 have completed it. That's something you can do.

13 **ATTORNEY RUTLEDGE:** It says the  
14 Refrigeration would have been 10/1/91, so that  
15 was --

16 **PRESIDING COMMISSIONER BIGGERS:** Excuse  
17 me, Commissioner Mejia. When you went through  
18 your C-file, did you not notice that those  
19 things were not there?

20 **INMATE PLAZA:** I did, but when I had seen  
21 that paperwork from the Chairman the --  
22 Commissioner, from the doc hearing, I thought it  
23 was going to be enough since he seen it and  
24 noted it on his record.

25 **PRESIDING COMMISSIONER BIGGERS:** Yeah,  
26 but (indiscernible) entirely different Panel we  
27 have to go by the documentation --

39

1 INMATE PLAZA: I understand.

2 PRESIDING COMMISSIONER BIGGERS: So,  
3 whenever you review whatever make sure that you  
4 have those papers.

5 DEPUTY COMMISSIONER MEJIA: Did you  
6 complete your Vocational Plumbing?

7 INMATE PLAZA: No, I was never in  
8 plumbing. I don't know where plumbing came  
9 from.

10 DEPUTY COMMISSIONER MEJIA: Well I have  
11 your diploma that -- Mr. Plaza has been unable  
12 to complete any certification units in  
13 vocational plumbing due to his being house in  
14 Level IV. Student left in the plumbing class  
15 long enough to be fully evaluated.

16 PRESIDING COMMISSIONER BIGGERS: What  
17 prison was that in?

18 DEPUTY COMMISSIONER MEJIA: ASP Avenal --  
19 Avenal State Prison.

20 INMATE PLAZA: I was in Wasco for, I  
21 think, three months and two weeks. But I was  
22 never in plumbing that I can remember. Soon as  
23 I got there they came out with the new law of  
24 the Close Custody -- not being, you know, not  
25 being able to be in that facility they  
26 transferred me over here.

27 DEPUTY COMMISSIONER MEJIA: Well, we'll



40

1 just leave it that you're claiming that you have  
2 completed Air Conditioning and Refrigeration; is  
3 that correct?

4 INMATE PLAZA: Dry Cleaning, Air  
5 Conditioning and Refrigeration.

6 DEPUTY COMMISSIONER MEJIA: Dry Cleaning  
7 you have completed?

8 INMATE PLAZA: Yes.

9 DEPUTY COMMISSIONER MEJIA: What year was  
10 the dry cleaning, again?

11 INMATE PLAZA: I believe it was '94 --

12 ATTORNEY RUTLEDGE: The Dry cleaning was  
13 -- I have completed 4/10/95, the Dry Cleaning  
14 and then the Air Conditioning, 10/1/99. What  
15 was the other one?

16 DEPUTY COMMISSIONER MEJIA: Most recent  
17 (indiscernible) Home Inspection.

18 INMATE PLAZA: I got that.

19 DEPUTY COMMISSIONER MEJIA: Okay. So,  
20 you're saying that you completed Air  
21 Conditioning and Vocational Dry Cleaning?

22 INMATE PLAZA: Yes.

23 DEPUTY COMMISSIONER MEJIA: And Air  
24 Conditioning Refrigeration? Anything else?

25 INMATE PLAZA: The Home Inspection, and  
26 the --

27 DEPUTY COMMISSIONER MEJIA: I'll go

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1 through that. But the actual vocational trade  
2 (indiscernible) because I know you took Data  
3 Processing, you did --

4 INMATE PLAZA: No, no --

5 DEPUTY COMMISSIONER MEJIA: -- assembly  
6 --

7 INMATE PLAZA: Yeah, I was not in the  
8 class --

9 DEPUTY COMMISSIONER MEJIA: Well, these  
10 are the two major ones that you're saying that  
11 you completed. Dry Cleaning, and Air  
12 Conditioning and Refrigeration.

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And then you  
15 did have -- completed the International  
16 (indiscernible) institute course, 8/23/1994.

17 INMATE PLAZA: That's Dry Cleaning.

18 DEPUTY COMMISSIONER MEJIA: That's  
19 connected to Dry Cleaning?

20 INMATE PLAZA: Yes.

21 DEPUTY COMMISSIONER MEJIA: Then you have  
22 -- you been in AA since 1994?

23 INMATE PLAZA: Ninety-three, '93, yeah  
24 somewhere around there. I don't remember the  
25 exact date.

26 DEPUTY COMMISSIONER MEJIA: But the  
27 chrono I saw was for '94.

1 INMATE PLAZA: Ninety-four.

2 DEPUTY COMMISSIONER MEJIA: Okay, that's  
3 fine. And you're still going --

4 INMATE PLAZA: Yes.

5 DEPUTY COMMISSIONER MEJIA: -- according  
6 to these last chronos, 4/1/2006. Going to the  
7 (indiscernible) Labauche Literacy Program, peer  
8 education program, Christian Fellowship, courses  
9 in Anger Management 2005, CLN courses, you've  
10 been (indiscernible) also Christian basic  
11 classes, you been involved in Teddy Bear  
12 (indiscernible) Teddy Bear Drive, Softball -- I  
13 see all this stuff in there. But I'm concerned  
14 about the major ones; AA, NA, Anger Management,  
15 (indiscernible) Impact is good. Impact  
16 programming -- you did some peer education  
17 program (indiscernible) sexually transmitted  
18 diseases, Hepatitis. You did some Bible --  
19 seven-week Bible Study series Christian Living.  
20 Let's see. Anything else you want to add?

21 ATTORNEY RUTLEDGE: Can I ask you,  
22 Commissioner, would you -- do you have the  
23 completion of AA since '94 or we don't?

24 DEPUTY COMMISSIONER MEJIA: I have the  
25 chronos since 1994. What's the first one --

26 ATTORNEY RUTLEDGE: Okay, I just wanted  
27 to make sure we didn't need to verify --

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1           DEPUTY COMMISSIONER MEJIA: Oh, no, it's  
2 good --

3           ATTORNEY RUTLEDGE: Thank you.

4           DEPUTY COMMISSIONER MEJIA: -- 1994,  
5 group therapy in 1994 is the first documentation  
6 of him going to AA. He did make (indiscernible)  
7 time positively. He did some softball. You  
8 been going to softball, playing games and you're  
9 part of the team and like I said -- anything  
10 else? Those are the major ones that I have.  
11 I've (indiscernible) that you have completed.  
12 No 115s and no 128(a)s. According to the 812  
13 you do have affiliation or membership in  
14 Southside King Cobra. I have no other -- other  
15 than the 812 that the counselor completes every  
16 year when you go to classification I have no  
17 other information about him being involved in  
18 any gang\*(indiscernible) in prison. And, now  
19 we're going to go through your psych reports.  
20 Of course, there's two. Since this is your  
21 initial, we're gonna do -- I'm gonna read both  
22 the -- this was done -- the first one was done  
23 in July 21st, 1994, in Lancaster, by Dr. Isaac  
24 (indiscernible), and the diagnosis -- Diagnostic  
25 Impression at that time is Axis I, Poly  
26 Substance Abuse; Axis II, Combat Disorder, group  
27 kind; Axis III, to be evaluated by physicians;

1 Axis IV, Psycho Social Stressors, from mild to  
2 moderate incarceration; Axis V, Global  
3 Assessment of Functioning of 70, sentence and  
4 incarceration; and according to the doctor that  
5 their recommendation is -- he said at that  
6 present time,

7 "In 1994 it was difficult to  
8 assess the psychopathology that's  
9 related to the crime. The inmate  
10 does not reveal many details due  
11 to the appeal process. However it  
12 seems that he was involved in  
13 behavior (indiscernible) by lack  
14 of regard for others, drugs and  
15 alcohol abuse. The inmate has  
16 improved while incarcerated. He  
17 made a statement 'I grew up. I'm  
18 mature.' Quote unquote. It's  
19 also an observation of his  
20 examiner. The inmate was able to  
21 express himself in a manner that  
22 indicated (indiscernible)  
23 increased maturity. Living in a  
24 controlled setting it is too early  
25 to make any assessment. However  
26 his record indicates that he is  
27 able to follow rules and

45

1 regulations and is also doing

2 above average programming.

3 (Indiscernible) recommended that

4 --"

5 [Thereupon the tape was turned over.]

6 **DEPUTY COMMISSIONER MEJIA:** --

7 psychological report on Mr. Plaza. "It is

8 recommended for him to continue his work

9 involving trade and other meaningful

10 activities." Then we have the most current,

11 which is -- which is dated April 15th, 2006, by

12 Dr. Macomber, M-A-C-O-M-B-E-R, and the

13 Diagnostic Impression is Axis I, Drug and

14 Alcohol Abuse by history; Axis II, no

15 personality disorder; Axis III, no physical

16 disorder; Axis IV, Life Term Incarceration, GAF

17 of 95. This --

18 "He does speak in excellent

19 English as well as Spanish.

20 Affect was appropriate. There was

21 no evidence of anxiety or

22 depression. Eye contact was good.

23 His memory was intact

24 (indiscernible) was intact. His

25 insight and self-awareness were

26 good. Assessment of

27 Dangerousness. In the potential

1           -- the prisoner's potential for  
2           dangerous behavior in the  
3           institution. Mr. Plaza has  
4           remained entirely  
5           disciplinary-free. This is  
6           commendable."

7   And the Causative Factors,

8           "He said that he has disassociated  
9           himself from the activity of  
10          Hispanic (indiscernible). No  
11          evidence that he had ever been  
12          involved in riots, possession of  
13          weapons, assaults and other --  
14          threats of any kind. At this time  
15          in this prison we have been --  
16          there has been frequent riots, and  
17          it is very difficult for a  
18          Hispanic male to disassociate  
19          himself from this activity which  
20          can spontaneously occur in front  
21          of him and if he doesn't get  
22          involved he will receive  
23          retaliation. In this case  
24          remaining disciplinary-free is a  
25          very difficult and commendable  
26          achievement. But because of his  
27          being disciplinary-free

1 (indiscernible) finds him  
2 definitely below average in  
3 comparison to other inmates.  
4 (Indiscernible) considering his  
5 dangerous behavior in the  
6 community -- potential for  
7 dangerous behavior in the  
8 community, Mr. Plaza has no prior  
9 arrest for violence before the  
10 commitment offense. He did  
11 receive an arrest as an adult  
12 making a (indiscernible) spraying  
13 a one-inch diameter dot on the  
14 wall. He remains  
15 disciplinary-free in the  
16 instituting. In order to examine  
17 this prisoner's level on parole,  
18 the level of (indiscernible) was  
19 administered and it's indicated  
20 the 12 measures that assess  
21 criminal history, substance abuse  
22 history, current adjustment, and  
23 other factors to determine risk  
24 level -- this measure he obtained  
25 a score of 3.6 (indiscernible)  
26 frequencies for prison for prison  
27 inmates. This means that if 100



1 men were released on parole, he  
2 would be (indiscernible) better on  
3 parole than 96 of them. This is a  
4 very low risk level; as a result  
5 he poses no more threat to society  
6 than the average citizen in the  
7 community, and probably less  
8 threat to society at this point in  
9 his life. At the time of his  
10 offense, drugs and alcohol were a  
11 problem. However, at this point  
12 in his life it is no longer an  
13 issue therefore there are no  
14 significant risk factors for this  
15 case."

16 Any addition to my presentation, counsel, that I  
17 missed -- you want to --

18 **ATTORNEY RUTLEDGE:** Did you mention how  
19 he's helped other -- he's been like a mediator  
20 for other gangs?

21 **PRESIDING COMMISSIONER BIGGERS:** Yeah, he  
22 mentioned that.

23 **ATTORNEY RUTLEDGE:** Okay (indiscernible).  
24 That covers everything that we had including  
25 what we submitted.

26 **PRESIDING COMMISSIONER BIGGERS:** Okay,  
27 we're going to parole plans. Residence plans;

1 you're living with your brother Hector Plaza.  
2 Hector's residence is 353 Carla Drive, Simi  
3 Valley, California, 93063, and it's got a phone  
4 number here. Employment; Plaza plans on working  
5 Italia International, 4175 Dragon Street, Simi  
6 Valley California. I saw the letter of -- that  
7 documents that. Also your brother's letter.  
8 Assessment in re of Plaza's parole plans. "This  
9 counselor does not foresee any problems.  
10 However, it's recommended that Plaza updates his  
11 parole letters prior to this hearing." I have  
12 -- this letter's here (indiscernible) Dale Air  
13 International from Nick Gillichbauer,  
14 G-I-L-L-I-C-H-B- as in Boy A-U-E-R. It's  
15 indicated that he's the General Manager of the  
16 organization and he's willing to give him  
17 employment in the company and he will make \$9.00  
18 per hour as an assembler, working in assembly  
19 with the basic hours of 7 o'clock to 3:30 p.m.  
20 He will have (indiscernible) basic benefits of  
21 medical and dental. And there -- some of your  
22 support letters now. Jessica Plaza, dated  
23 February 20, 2006, a support letter indicating  
24 that -- lots of support from all the family and  
25 we need to (indiscernible) his mind and heart  
26 set to accomplish all the right things and not  
27 wrong things, for taking time to read this

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1 letter of support. She (indiscernible) says  
2 that she will -- Isabelle Plaza. Your sister  
3 also wrote a letter February 5, 2006. It  
4 doesn't say that you can -- yeah, it's  
5 supporting your release, but -- so Jessie --  
6 Jesus Plaza is some brother that you're going to  
7 be staying with --

8 INMATE PLAZA: No -- my dad is Jesus.

9 DEPUTY COMMISSIONER MEJIA: Your dad --  
10 your dad is Jesus Plaza? There's another  
11 letter, February 5, 2006. It says that you're  
12 ready to go back to society. There is Hector  
13 Plaza, November 12, 2005. He should be granted  
14 parole. He said that you should be granted  
15 parole and of course you have become a positive  
16 role model for everyone. He said that you will  
17 always have a home here with his wife and  
18 children, and I also plan on supporting him  
19 financially with whatever it takes to help you  
20 get on your feet.

21 INMATE PLAZA: Correct.

22 DEPUTY COMMISSIONER MEJIA:

23 (Indiscernible) Ministry (indiscernible) these  
24 are your aunts and uncles --

25 INMATE PLAZA: Yes.

26 DEPUTY COMMISSIONER MEJIA: Yolanda Plaza  
27 and Arto (Phonetic) Plaza. He's a Pastor in a

1 church?

2 INMATE PLAZA: Yes, he is.

3 DEPUTY COMMISSIONER MEJIA: They will  
4 provide you counseling, and will be able to  
5 provide you mentors and he's also owner of a  
6 construction business and would be services --  
7 if he needs employment -- if you need employment  
8 he will be able to give you employment.

9 INMATE PLAZA: He's also offering me to  
10 stay in his home. He gave me -- it's actually  
11 in this other packet -- has his phone number,  
12 cell number, anything you might need to ask him  
13 any further questions.

14 DEPUTY COMMISSIONER MEJIA: Helen Plaza  
15 is your mother?

16 INMATE PLAZA: Yes.

17 DEPUTY COMMISSIONER MEJIA: And I have a  
18 support letter here, asking that you should be  
19 -- asking for your release. She also said that  
20 you'll have a house to come home -- when you  
21 come home. Rachel Plaza, I think is your  
22 sister?

23 INMATE PLAZA: Yes, correct.

24 DEPUTY COMMISSIONER MEJIA:

25 (Indiscernible) you have her total support,  
26 either financially -- financial support.

27 Christina Plaza, this is your daughter.

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1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Asking that  
3 -- how old is she?

4 INMATE PLAZA: She is 19.

5 DEPUTY COMMISSIONER MEJIA: Oh. You have  
6 -- she indicates that you have supported her by  
7 teaching (indiscernible) classes. Thinks you  
8 should be -- she's going to college. She's  
9 looking for work to help (indiscernible) you,  
10 any way possible. And we have Guadalupe Plaza,  
11 your wife?

12 INMATE PLAZA: Yes.

13 DEPUTY COMMISSIONER MEJIA: Another  
14 support letter. She says I will support him in  
15 ever way that he needed for him to meet his  
16 parole conditions. Isaiah Plaza, your son?

17 INMATE PLAZA: Yes.

18 DEPUTY COMMISSIONER MEJIA: He -- how old  
19 is he?

20 INMATE PLAZA: He's ten.

21 DEPUTY COMMISSIONER MEJIA: Ten. And  
22 there's another one, Ramona Plaza, your -- your  
23 daughter, too?

24 INMATE PLAZA: That's correct.

25 DEPUTY COMMISSIONER MEJIA: Letter of  
26 support. Annette Gizmalla (phonetic). That's  
27 your sister?

53

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Another  
3 letter of support. She says she owns her own  
4 and will provide a place for you to live, help  
5 you financially and help you enter your programs  
6 with counseling to help you deal with everyday  
7 life's events for as long as it takes. And  
8 Alicia Desente Islanded (phonetic), who is this?  
9 Oh, this is -- this looks like it's a different  
10 one. Who's Juan Jose (indiscernible)?

11 INMATE PLAZA: Excuse me.

12 ATTORNEY RUTLEDGE: One from Mexico?

13 DEPUTY COMMISSIONER MEJIA: You have -- I  
14 couldn't read this. 9805 Jessie Plaza, okay,  
15 H12371 that's you. And, for M. Espinoza -- this  
16 is a friend?

17 INMATE PLAZA: Yes, it is.

18 DEPUTY COMMISSIONER MEJIA: Okay. It's  
19 another letter of support. And, Chaplain  
20 (indiscernible) Lindsey -- this is the Chaplain  
21 here in the prison --

22 INMATE PLAZA: Yes, it is.

23 DEPUTY COMMISSIONER MEJIA: Okay. Letter  
24 of support and he said that you have been an  
25 outstanding gentleman since his observation of  
26 you since 1998. He was appointed Music Deacon  
27 in 2003. You a musician? You play music?

1           INMATE PLAZA: No. No. I just direct  
2 the choir.

3           DEPUTY COMMISSIONER MEJIA: Oh. He said  
4 that you have -- he has seen phenomenal changes  
5 in your life during these years and he's a  
6 wonderful role model, conscious of people's  
7 needs, feelings and (indiscernible). He's truly  
8 an asset to our religious program here at CTF.  
9 And he highly recommends consideration of the  
10 Board of Prison Terms and this gentleman has --  
11 he feels that you will be an outstanding asset  
12 in the community. Nabia Anegias (phonetic),  
13 cousin?

14           INMATE PLAZA: Say the name again?

15           ATTORNEY RUTLEDGE: Yeah, it's his  
16 cousin, Nadia Anegus (phonetic).

17           DEPUTY COMMISSIONER MEJIA: Nadia Anegus,  
18 another support letter.

19           ATTORNEY RUTLEDGE: Oh, well, you know  
20 what -- it's from the Juan (indiscernible)  
21 files. Poor Juan Reevus, (indiscernible) find  
22 these letters.

23           DEPUTY COMMISSIONER MEJIA: Okay, Jessie  
24 Plaza and that this is from an (indiscernible)  
25 from Glenbrook, Philadelphia?

26           INMATE PLAZA: Yes. That's actually --  
27 that's my sister --

55

1           DEPUTY COMMISSIONER MEJIA: Your sister?

2           INMATE PLAZA: Yes. She married -- her  
3 name changed to Guerum (phonetic) but --

4           DEPUTY COMMISSIONER MEJIA: She said that  
5 she will continue to support you after release  
6 until you get back on your feet. She also  
7 offers her home.

8           INMATE PLAZA: Yeah.

9           DEPUTY COMMISSIONER MEJIA: Guadalupe  
10 Plaza, that's your wife. You said 2000 -- I  
11 don't know what year was this one, but I read  
12 (indiscernible) I know she's going to support  
13 you. January 7th, 2005, Jesus Plaza -- your  
14 father. Right?

15          INMATE PLAZA: Yes, that's correct.

16          DEPUTY COMMISSIONER MEJIA: Okay. Ramona  
17 Plaza --

18          INMATE PLAZA: My daughter.

19          DEPUTY COMMISSIONER MEJIA: Your  
20 daughter. Isaiah Plaza -- I read that.

21          PRESIDING COMMISSIONER BIGGERS: Some of  
22 them are duplicates, some are from 2005 and some  
23 are 2006.

24          DEPUTY COMMISSIONER MEJIA: Anything else  
25 (indiscernible)?

26          ATTORNEY RUTLEDGE: I think you've  
27 covered every letter and more and even those



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1 that didn't belong to us. So, thank you.

2 **DEPUTY COMMISSIONER MEJIA:** And let me  
3 turn this back to the Commissioner.

4 **PRESIDING COMMISSIONER BIGGERS:** Okay,  
5 thank you. I just have one question there. I  
6 see that you want to parole to your brother.  
7 Why aren't you paroling back to your wife?

8 **INMATE PLAZA:** Oh, yes, my wife moved in  
9 with her sister two years ago. Her mother'd  
10 been fighting cancer. Unfortunately her mother  
11 passed away November of last year, and currently  
12 she's still living with her sister. But upon my  
13 release, hopefully within the next, you know,  
14 within three to six months, between the both of  
15 us we'll have the money to put a first and last  
16 down payment, you know, that you need for your  
17 -- our own place so that we can live together.  
18 But currently she's with her sister.

19 **PRESIDING COMMISSIONER BIGGERS:** Did I  
20 miss anything -- talking about the, what little  
21 we could talk about the crime --

22 **ATTORNEY RUTLEDGE:** You know, I meant to  
23 point out to you -- it's up to your discretion.  
24 He did provide a version in the Board Report.

25 **PRESIDING COMMISSIONER BIGGERS:** Yeah, I  
26 saw that.

27 **ATTORNEY RUTLEDGE:** Other than that,

1 except for Closing Statement, we have nothing  
2 else to --

3           **PRESIDING COMMISSIONER BIGGERS:** To talk  
4 about -- okay. At this point then I'm gonna ask  
5 the District Attorney if he has any questions  
6 for the -- Mr. Plaza.

7           **DEPUTY DISTRICT ATTORNEY MORRISON:** Okay.  
8 Did I hear the inmate say that he accepted  
9 responsibility for the crime an hour into the  
10 law enforcement interview?

11           **INMATE PLAZA:** Correct.

12           **PRESIDING COMMISSIONER BIGGERS:** Please  
13 direct your answers to (indiscernible).

14           **DEPUTY DISTRICT ATTORNEY MORRISON:** Just  
15 a moment, please. So at the time of his trial,  
16 the inmate accepted full responsibility for the  
17 crime.

18           **INMATE PLAZA:** Correct.

19           **DEPUTY DISTRICT ATTORNEY MORRISON:** Thank  
20 you. I have no further questions. Oh, wait a  
21 minute. Does the inmate know what the matrix  
22 for this crime is?

23           **INMATE PLAZA:** I believe it's 27, 28  
24 years.

25           **DEPUTY DISTRICT ATTORNEY MORRISON:** Thank  
26 you. Nothing further.

27           **PRESIDING COMMISSIONER BIGGERS:** Okay,

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1 thank you, sir. Ms. Rutledge.

2 **ATTORNEY RUTLEDGE:** Thank you. In  
3 looking through some of your information I came  
4 across a letter that's -- I wanted to ask you  
5 about this letter. It's addressed to all family  
6 members, loved ones, and friends of Patrick  
7 Littlebull. You made an attempt to submit an  
8 apology letter to his family or to the District  
9 Attorney?

10 **INMATE PLAZA:** I mailed that to the  
11 address indicated on the (indiscernible).

12 **ATTORNEY RUTLEDGE:** All right. And what  
13 was -- I didn't see the -- what was the address?

14 **INMATE PLAZA:** Is it not on the  
15 letterhead of the --

16 **ATTORNEY RUTLEDGE:** Oh, the  
17 Correspondence Division in Sacramento.

18 **INMATE PLAZA:** Yes. Sacramento, yes.

19 **ATTORNEY RUTLEDGE:** Okay, and that was  
20 dated June 15th, 2004. It -- I'll go ahead and  
21 leave it if the Board wishes to review it, but I  
22 think you wrote it on the prompting of Impact?

23 **INMATE PLAZA:** Yes, correct.

24 **ATTORNEY RUTLEDGE:** Anyway, I just wanted  
25 to note that this letter -- he had written a  
26 letter to the family, and what did you learn in  
27 Impact?

1           **INMATE PLAZA:** Do you want to be  
2 specific, or do you want me to tell you  
3 everything that I learned in Impact?

4           **ATTORNEY RUTLEDGE:** Well, what changed  
5 your life about Impact?

6           **INMATE PLAZA:** I'd have to say the thing  
7 that was a drastic blow to me more than anything  
8 was there was an individual by the name of Angie  
9 Torres, her son was killed in a drive-by here in  
10 Salinas and I had the opportunity to sit down  
11 with her and discuss with her some of the  
12 specifics of my crime and in sharing with her --  
13 she had not shared with me but I shared with  
14 her, and upon finishing my, you know, my talk  
15 with her I introduced her -- I am a facilitator  
16 of Impact -- I introduced her and I went and sat  
17 down with the audience in the pews and then she  
18 had her opportunity to get up and give a  
19 presentation, and when she gave the presentation  
20 the similarities of what happened to her son was  
21 just -- it was eerie because they were just so  
22 close, and afterwards we had the opportunity to  
23 talk and she told me, you know, that -- she  
24 said, yeah you don't know what you did when you  
25 were talking to me. She says, you know, and you  
26 didn't even know my story and the same for me.  
27 I didn't know her story, but yet I shared with

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1 her, and then upon learning her story it just --  
2 it blew me away because I just realized what it  
3 must have felt like to be on the other side.  
4 Because in Impact that's one of the things that  
5 we teach. We teach victim awareness. We teach,  
6 you know, so many people are used to being on  
7 the side of the crime -- on the side of, you  
8 know, being the wrong one, and they never know  
9 what it's like to be on the other side. Most  
10 guys come out of that program with a totally  
11 different vision of crime. A lot of them come  
12 out and they say, wow, I never knew that I had  
13 that impact on my victims. So it -- it really  
14 -- it had -- it gave me a greater view, you  
15 know. It wasn't just that focus on one person  
16 or one individual. It opened my understanding  
17 of how many -- how great an effect it had.

18 **ATTORNEY RUTLEDGE:** What about the people  
19 in this room? Do you think this offense affects  
20 us?

21 **INMATE PLAZA:** Oh, definitely,  
22 definitely. I believe it does because -- again,  
23 speaking on the ripple effect, not only did it  
24 effect him, his family, his friends or his loved  
25 ones, but it effected society and I realize that  
26 it all trickles down and what happens is taxes,  
27 money, time spent, you know, it all, you know,

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1 it's a ripple effect that never reaches the  
2 banks of the water.

3 **ATTORNEY RUTLEDGE:** All right. And,  
4 there's a statement in the Probation Report  
5 that's pretty negative about you. I mean,  
6 you're in a car with gang-bangers and someone is  
7 shot and killed and left to die on the street.  
8 How do you go from that to the person that you  
9 are today? What happened?

10 **INMATE PLAZA:** I would have to say even  
11 though I chose that -- to hang around with them  
12 type of people, you know, chose to be around  
13 that lifestyle, in all honesty I never expected  
14 to end up in prison and upon --

15 **ATTORNEY RUTLEDGE:** (Indiscernible).

16 **INMATE PLAZA:** -- honestly I didn't. But  
17 upon me actually making it to prison due to bad  
18 choices, it was just a slap in the face, you  
19 know. It was just reality and when it hit me I  
20 realized that, you know, everything that I had  
21 been doing, you know, reality was what I got,  
22 you know, being in prison and it wasn't  
23 something that -- it just didn't sit right with  
24 me, and I knew that this wasn't me, you know. I  
25 didn't -- I didn't want to -- I didn't want to  
26 be in prison or be one of them persons that go  
27 in and out of prison, so it was a -- it was a,

1 you know, it was a rude awakening.

2 **ATTORNEY RUTLEDGE:** No further questions.

3 **PRESIDING COMMISSIONER BIGGERS:** Okay.

4 Thank you. At this point I'm going to ask Mr.  
5 Morrison for his closing.

6 **DEPUTY DISTRICT ATTORNEY MORRISON:** The  
7 District Attorney opposes parole for this  
8 outrageous heinous and premeditated, vicious  
9 gang attack. The inmate aided and abetted by  
10 driving his vehicle over to the location of the  
11 murder, parking it without its lights in what  
12 the Appellate opinion described as almost lying  
13 a wait attack. And Mr. Littlejohn (sic) a rival  
14 gang member was shot and killed. He was not the  
15 only victim. The Bell Garden's Police Report  
16 which had been submitted along with the  
17 Sheriff's Homicide Report note that the  
18 supplemental report Officer Winfrey,  
19 W-I-N-F-R-E-Y, Bell Garden PD was staffed to the  
20 home of witness Collins who found a hole in his  
21 south kitchen window and an adjacent hole in the  
22 wallboard next to the window. The officer  
23 observed a hole, approximately one inch in  
24 diameter, in the lower portion of the south  
25 kitchen window. Glass fragments were present on  
26 the interior window sill. Another little hole  
27 was present in the interior vertical portion of

1 the inside of the window frame, and the reason  
2 this is significant is because the inmate with  
3 his gang mentalities and his crime partner  
4 sprayed bullets in a residential neighborhood.  
5 One was recovered from victim Littlejohn which  
6 was matched to the murder weapon which was found  
7 secreted in the inmate's car. The witnesses  
8 which described in the reports, noted numerous  
9 shots being fired and any one of those bullets  
10 could have gone through the house like it did  
11 Mr. Collins home and killed another innocent  
12 person in their home, minding their own  
13 business. This is the kind of gang that's  
14 plagued Los Angeles and all communities around  
15 the state and country, senseless gang violence.  
16 The motive was a retaliatory shooting because  
17 the Bell Garden Locos had fired on King Cobra  
18 earlier that night. The inmate should be  
19 commended; he's programmed well. Not many  
20 people come this long without a 115. He is on  
21 the way to turn his life around, as evidenced by  
22 his programming. However, the inmate still I  
23 don't believe has come to grips with the crime  
24 because he's still not candid with the Board.

25 ATTORNEY RUTLEDGE: Objection.

26 PRESIDING COMMISSIONER BIGGERS:

27 (Indiscernible) statement. Please continue.



1           DEPUTY DISTRICT ATTORNEY MORRISON: The  
2 inmate said he took responsibility into the  
3 Sheriff's interview, and this was documented at  
4 length in the Appellate Opinion as well as the  
5 statements contained in the police report. This  
6 is in the Appellate Opinion, Page Four and Five,  
7 which has not been read into the record yet.  
8 "Deputy Sheriff Woods Danoff, D-A-N-O-F-F,  
9 interviewed appellant on May 27th, 1990."

10           ATTORNEY RUTLEDGE: We would object to  
11 the reading of the police report, just because  
12 it's submitted there's still not adequate  
13 foundation for it to be read into the record.

14           DEPUTY DISTRICT ATTORNEY MORRISON: This  
15 is the Appellate Opinion summarizing the  
16 evidence at trial.

17           ATTORNEY RUTLEDGE: I'm sorry, I thought  
18 you said a Sheriff's Report.

19           PRESIDING COMMISSIONER BIGGERS: Go  
20 (indiscernible).

21           DEPUTY DISTRICT ATTORNEY MORRISON: Page  
22 Four in the Appellate Opinion, Deputy Sheriff  
23 Woods Danoff, who is one of the two LA SD  
24 homicide investigators in the case who  
25 interviewed the inmate.

26           "He interviewed appellant inmate  
27 on May 27th, 1990. Appellant at

1 first denied any knowledge of the  
2 shooting, maintaining he had been  
3 at a party at the time of the  
4 shooting. After being informed  
5 that his car had been identified  
6 as being used in the homicide and  
7 that the gun had been recovered  
8 from the car, appellant admitted  
9 that he drove the car that was  
10 used in the shooting -- "

11 **DEPUTY COMMISSIONER MEJIA:** Excuse me --

12 **PRESIDING COMMISSIONER BIGGERS:**

13 Continue, Sir.

14 **DEPUTY DISTRICT ATTORNEY MORRISON:** I'll

15 repeat the last sentence, since it was --

16 "After being informed that his car  
17 had been identified as being used  
18 in the homicide and that the gun  
19 had been recovered from the car,  
20 appellant admitted that he drove  
21 the car that was used in the  
22 shooting and (indiscernible)  
23 supplied the weapon and the car.  
24 Appellant claimed that the shooter  
25 was named someone -- someone named  
26 Oso, O-S-O, and that he neither  
27 slowed the car down nor stopped

1           the car and never turned off his  
2           headlights. He claimed Oso later  
3           left the car and that he later  
4           picked up Silva and was giving him  
5           a ride to Silva's sister's house  
6           when they were stopped and  
7           arrested."

8   Now, the inmate apparently is saying that's when  
9   he accepted responsibility. I asked the inmate  
10   specifically if he had accepted responsibility  
11   in the testimony at his trial, and that is not  
12   correct according to the Appellate report  
13   summary of the inmate's testimony. The inmate's  
14   testimony, under oath, at trial was a denial.  
15   The Appellate Report continues on the same page.

16           "Appellant testified he gave a  
17           ride to a man named Oso who was  
18           seeking to purchase cocaine. Oso  
19           told the appellant that he could  
20           not use his own car because it was  
21           hot. While looking for the  
22           cocaine to sell, the appellant saw  
23           seven to ten men running at his  
24           car. The appellant accelerated  
25           and hear Oso shout punks at the  
26           men. Oso then pulled out a  
27           revolver and fired. Appellant

1           drove away. Appellant did not  
2           know that Oso had a gun until he  
3           fired it. His car lights were not  
4           turned off, and he slowed down  
5           only for the purpose of finding  
6           the cocaine dealer. Oso tried to  
7           hand appellant the revolver after  
8           he fired it, but appellant pushed  
9           it away and it fell into the part  
10          of the car where the radio was  
11          missing. Appellant refused to  
12          disclose the identity of Oso  
13          saying he would be killed if he  
14          did."

15 I submit that that is not accepting  
16 responsibility for being the aider and abeter,  
17 driving a fellow gang member over to the  
18 location, parking with your lights out in what  
19 the Appellate Court labeled almost lying in  
20 wait, and allowing your crime partner to go up  
21 and shoot a rival gang member motive being gang  
22 retaliation, and as I had said spraying bullets  
23 all around. The defendant's testimony at trial  
24 was a rejection of responsibility, a denial of a  
25 commission of the file, and is absolutely not  
26 what he told the Panel today that he accepted  
27 responsibility in the trial. He's basically

1 says, oh, I gave some dude a ride to go buy some  
2 coke and then all of a sudden he pulls out a gun  
3 and starts shooting somebody. I had no idea.  
4 That is not responsibility. The inmate was  
5 attempting to be exonerated of the crime. The  
6 Appellate Report Opinion goes into great length,  
7 and I won't read it all, but on Page Six it  
8 describes all the evidence testified by other  
9 witnesses supporting of pre-meditated murder.

10 "The appellant's driving slowly  
11 with his lights off, thus  
12 eliminating attention to his  
13 approaching car is strong evidence  
14 of prior planning. The approach  
15 without lights is factually  
16 similar to lying in wait and  
17 illustrates a deliberate plan by  
18 the occupants of the car to  
19 approach to victim unnoticed so  
20 that the killing could be  
21 accomplished from a position of  
22 surprise and advantage. The  
23 relationship between appellant and  
24 the victim, each belonging to  
25 rival gangs between which there  
26 was bad blood provided evidence of  
27 the appellant's motive for the

1 shooting. The manner of the  
2 shooting, one person shooting and  
3 another driving so as to  
4 facilitate an easy and rapid  
5 escape especially when coupled  
6 with appellant's slow approach to  
7 the scene with his lights off  
8 reflects that the killing resulted  
9 from a pre-conceived desire."

10 This is about as callous, cold-blooded and  
11 calculated murder as you can have. The only  
12 thing was the appellant apparently did not pull  
13 the trigger. But he did everything short of  
14 that. The psych report in 1994, said well he  
15 didn't really want to go into the details of it  
16 because it was still on appeal. Current psych  
17 report just glosses over the apparent lack of  
18 insight and says because of his good behavior he  
19 is a low risk. I submit that until he  
20 demonstrates more credibility with the Panel and  
21 more insight into his actual role and  
22 participation, he has not taken responsibility  
23 for it and therefore his statements of remorse  
24 and the psych report are not actually supportive  
25 because they really didn't delve into it. The  
26 fact that he hadn't been caught in other crimes,  
27 had a minimal criminal record is commendable.

1 It's not really an escalating pattern of  
2 violence. He did have summary probation, but  
3 the inmate told the psychologist in 1994, which  
4 was also kind of troubling, that he had the  
5 mentality of a 15 year old. He indicated that  
6 this tragic event, being convicted of murder,  
7 was a quote "wake up call" --

8 **ATTORNEY RUTLEDGE:** Objection. It  
9 doesn't say being convicted of murder.

10 **PRESIDING COMMISSIONER BIGGERS:** What  
11 page are you on, sir?

12 **DEPUTY DISTRICT ATTORNEY MORRISON:** I  
13 just -- it doesn't. I am commenting on his  
14 psych report. He's -- the inmate indicated --

15 **PRESIDING COMMISSIONER BIGGERS:** Just a  
16 second, sir. Okay. Let's keep this civil and  
17 it's not written -- are you reading directly  
18 from the psychologist's report?

19 **DEPUTY DISTRICT ATTORNEY MORRISON:** I  
20 read it and then I made a parenthetical comment.

21 **PRESIDING COMMISSIONER BIGGERS:** Okay.  
22 Then perhaps you should paraphrase it saying  
23 your opinion. Continue.

24 **DEPUTY COMMISSIONER MEJIA:** What is  
25 interesting is talking about that the immature  
26 behavior at the time -- that's on Page One of  
27 the report, and he stated I had the mentality of

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1 a 15 year old. The official version read  
2 described a juvenile man. The inmate was 25 at  
3 the time of his crime. This is not a youthful  
4 offender, unsophisticated (indiscernible). This  
5 isn't a 15 or 16 year old gang banger. This is  
6 a 25 year old out on a mission of revenge.

7 **ATTORNEY RUTLEDGE:** Objection. Mission  
8 of revenge? Where's that from? You're supposed  
9 to -- excuse me. I just want to note that the  
10 DA's supposed to -- your comments are supposed  
11 to be supported by documentation.

12 **PRESIDING COMMISSIONER BIGGERS:**  
13 (Indiscernible).

14 **DEPUTY COMMISSIONER MEJIA:** The Appellate  
15 Decision -- talking about a retaliatory gang  
16 opinion -- member for a --

17 **PRESIDING COMMISSIONER BIGGERS:** Let's --  
18 let's -- okay. Let's -- whenever --

19 **DEPUTY DISTRICT ATTORNEY MORRISON:** this  
20 is within the range of proper comment.

21 **PRESIDING COMMISSIONER BIGGERS:** Then Mr.  
22 Morrison, if we're gonna speculate I think we  
23 need to make sure that we say and we make  
24 (indiscernible) in your opinion or -- I don't  
25 think that we should speculate on something of  
26 this nature.

27 **DEPUTY DISTRICT ATTORNEY MORRISON:**



1 Commissioner, excuse me, but I'm permitted to  
2 make public comment. I'm not asking you to  
3 speculate. The Appellate Decision describes --

4 PRESIDING COMMISSIONER BIGGERS: I  
5 understand --

6 DEPUTY DISTRICT ATTORNEY MORRISON: --  
7 any motivation --

8 PRESIDING COMMISSIONER BIGGERS: I  
9 understand that.

10 ATTORNEY RUTLEDGE: From another --

11 DEPUTY DISTRICT ATTORNEY MORRISON: There  
12 was a rival shooting. There was a rival  
13 shooting --

14 PRESIDING COMMISSIONER BIGGERS: I  
15 understand that.

16 DEPUTY DISTRICT ATTORNEY MORRISON: Now,  
17 if the gang goes out to retaliate --

18 PRESIDING COMMISSIONER BIGGERS: Then  
19 that's the way you should phrase it -- that  
20 based on --

21 DEPUTY DISTRICT ATTORNEY MORRISON: That  
22 is what gang members refer to as getting  
23 revenge.

24 PRESIDING COMMISSIONER BIGGERS: I  
25 understand that, sir.

26 DEPUTY DISTRICT ATTORNEY MORRISON: And  
27 my comment is that he was out on a mission of

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1 revenge that resulted in the death and a shot up  
2 neighborhood. And therefore, a particularly  
3 egregious crime under Dannenberg, as the Chair  
4 noted the case the inmate submitted, and he is  
5 unsuitable for parole and we ask for a three  
6 year denial. Thank you.

7           **DEPUTY COMMISSIONER MEJIA:** Let's --  
8 before you do your -- let me just put on the  
9 record that he does have the completion  
10 paperwork, because it was very confusing -- you  
11 had to really look at it. He did have Air  
12 Conditioning completion in October 1997. It's  
13 just confusing. It doesn't say he completed it.  
14 It says his assignment (indiscernible) and Mr.  
15 Plaza has completed 15 certification units, 100%  
16 of the class. Maybe that how we --

17           **INMATE PLAZA:** A hundred percent of what?

18           **DEPUTY COMMISSIONER MEJIA:** Of the class.  
19 I don't know what it means, sir, but it does say  
20 that he has completed -- units completed. This  
21 is the Education Progress Report. Normally they  
22 put here completed completion, but it just say  
23 completed some of the curriculum -- that's when  
24 he was a Clerk. And then when he became a  
25 student he completed 15 certification units,  
26 100% of the class. So I would say that is  
27 completion.

1           PRESIDING COMMISSIONER BIGGERS: All

2 right thank you.

3           DEPUTY COMMISSIONER MEJIA: And then

4 another one is October 28, 2000 -- October 28th

5 -- April 28th, 1995, he completed his Vocational

6 Dry Cleaning. Another confusing chrono here.

7 We may have to look at it again. A handwritten

8 (indiscernible) Teacher's Aide and .

9 (indiscernible) he was a key person assisting in

10 (indiscernible) Dry Cleaning program, all areas

11 in training and development of other students.

12 He has learned all aspects of this Dry Cleaning

13 business. And it's noted here, reason for the

14 termination, his job change -- Job change

15 completed. So which means I would say

16 (indiscernible) in 1994, (indiscernible) 1995 he

17 has completed the Dry Cleaning business.

18           PRESIDING COMMISSIONER BIGGERS: So

19 basically you're saying the chrono's in support

20 of completion; just don't have the --

21           DEPUTY COMMISSIONER MEJIA: Yeah, the

22 actual completions.

23           PRESIDING COMMISSIONER BIGGERS: The

24 actual completions. Ms. Rutledge, closing

25 please.

26           ATTORNEY RUTLEDGE: Thank you for

27 verifying that for us, Commissioner. While I'd

1 like to go off of the suitability factors, I  
2 think that's most appropriate. We're here today  
3 because we -- well you know why we're here, the  
4 legislature sets an open term for a crime such  
5 as this and -- meaning that there is a belief  
6 that persons committed for first-degree murder  
7 may at some point become suitable members of  
8 society, people who have paid their debt to  
9 society, bettered themselves, and we can all  
10 feel reasonably safe that they're out among us.  
11 Had this commitment offense been of the -- had  
12 it been truly lying in wait -- which is a  
13 special circumstance of first-degree murder  
14 punishable by death, we may not be sitting here  
15 today. The commitment offense itself, my client  
16 has taken responsibility for it. What was said,  
17 his testimony to the Court, matches what he has  
18 said in earlier reports. And, under Dannenberg,  
19 specifically Dannenberg, I think is supportive  
20 of when you have to -- and I know you have to  
21 weigh the commitment offense but weighing that  
22 in, Dannenberg says if it doesn't take more than  
23 it was necessary to complete the murder. This  
24 victim was shot and died within minutes.  
25 There's no evidence of mutilation, there's no --  
26 there were no other targeted victims. We found  
27 a bullet -- but we don't even know if anybody

1 was home. There's no evidence that there were  
2 other people that were actually at harm at the  
3 time of the shooting. In moving on to my  
4 client's remorse for this offense. He has --  
5 he's expressed today his remorse for this crime,  
6 but I think more importantly his determination  
7 to turn himself around. Had he been such a hard  
8 core gang member, he'd never had made it this  
9 far. We know that. We know how it is to enter  
10 a prison on a Level IV and what it takes to  
11 survive. And it takes a lot of determination.  
12 It takes somebody who truly does realize that,  
13 you know, there's a better way to live. And, I  
14 think to his, you know -- the prison Chaplain  
15 (indiscernible) he doesn't write letters for  
16 very many inmates. This is the first one I've  
17 seen. And he wrote something really important  
18 because I think -- I think this really says it  
19 all about my client as far as remorse would go,  
20 I think that that I would speculate and submit  
21 that that's -- he could be programming doing  
22 everything he's supposed to do and not go to  
23 church. There's got to be some -- I would  
24 submit or speculate that perhaps he's got some  
25 insight and a conscience to where he feels the  
26 need to associate with the church. And, there  
27 was a paragraph that wasn't read during the

1 letters that I just wanted to say and it was  
2 written by Chaplain Lindsay. And it says,

3 "People often ask me what kind of  
4 results I see in my work here in  
5 the prison. I will hold up one  
6 hand showing the number five, and  
7 they will say those odds aren't  
8 very good since there are more  
9 than 7,000 plus inmates in your  
10 facility. To which I'll reply,  
11 you're right, except I look at it  
12 as mining for diamonds and when  
13 you find one you have some -- when  
14 you find one you have something of  
15 value."

16 Well, inmate Plaza is one of those diamonds.  
17 You know, I'm not going to sit her and  
18 regurgitate all of his accomplishments and the  
19 binder he provided to the Board -- we've gone  
20 over them. In every area of programming he's  
21 met -- he's met self-help, he admits his  
22 substance abuse, he's been treating that  
23 substance abuse, he's done Impact, he's done  
24 Anger Management, he's participating in sports,  
25 he has an excellent job record. He's actually  
26 got a chrono from his supervisor in Culinary  
27 who's recommending him for a job, I mean,

1 anticipating that an employer on the outside  
2 where the public has access to the restaurant  
3 that he's going to present that in a public  
4 place and ask for employment. He has, you know,  
5 taken other health courses and has not had a 115  
6 or anything in 15 years, which is extremely  
7 commendable. And again, that more expresses, I  
8 think, his insight in to literally reversing his  
9 life. He said he was leading an irresponsible  
10 life at that time; however he did work and  
11 support his wife and children. Did you have one  
12 child at that time or --

13 **INMATE PLAZA:** Two.

14 **ATTORNEY RUTLEDGE:** He had two that he  
15 supported. So he did -- it was like he said, he  
16 was kind of a -- he was a dysfunctional person  
17 over all, but able to maintain a job and take  
18 care of his family which indicates that there  
19 are pro social qualities in this man. He's not  
20 just some thug out there, you know, blowing  
21 people away. He has a very stable social  
22 history as far as being with his family, being  
23 married. He's still married to the same woman;  
24 still has three children. Appreciates the  
25 impetus he put on her when he entered the  
26 institution and forced her into being a single  
27 parent. He's got letters from his children that

1 he's attempting to father from prison, cousins,  
2 other assortment of persons, and also he has at  
3 least two job offers. One from Mr. Rentaria  
4 (phonetic) and then one from his previous  
5 employer -- was it --

6 INMATE PLAZA: Yes.

7 ATTORNEY RUTLEDGE: -- where he worked.  
8 He had a good job record there before he entered  
9 the institution. And aside from all the great  
10 things he's done which I think all point to  
11 suitability and the fact that he has expressed  
12 his remorse and does, by his actions not just  
13 his comments, have insight into how much trouble  
14 he created with this offense and saw what he  
15 needed to do to turn it around. But I think we  
16 do -- I think oftentimes in these types of cases  
17 there's the white elephant in the room, which is  
18 time. This is his first hearing and it's almost  
19 a given that nobody gets paroled their first  
20 hearing. I think the jargon is always he needs  
21 to maintain his gains or you point to the  
22 commitment offense, but I think that the  
23 suitability --

24 DEPUTY COMMISSIONER MEJIA: -- hold it.

25 [Thereupon the tape was changed to Tape Two.]

26 DEPUTY COMMISSIONER MEJIA: Okay, go  
27 ahead, continue. Second side, second set of



1 tapes for Mr. Plaza.

2           **ATTORNEY RUTLEDGE:** I do believe that  
3 this man meets every single suitability factor.  
4 He has completed his programming -- I mean, he  
5 remains active in his programming and he's done  
6 all those things necessary to show us that he's  
7 serious about release and I think the only  
8 question that would linger would be time,  
9 because often we don't see people paroled by  
10 their first hearing but I would say this man is  
11 one of the few cases that we see where he's  
12 suitable at his first hearing. He's suitable.  
13 He's prepared to enter the outside. He's got a  
14 plan and the information he submitted to the  
15 Board wherein he's going to -- exactly what he's  
16 going to do when he walks out the doors. I  
17 would just ask this Board -- I know it's a  
18 difficult job for you and I know you've gotta  
19 consider the person paying their debt to society  
20 because that's part of our justice system, but I  
21 would ask you to -- to give this man a different  
22 look as somebody who is suitable, who has served  
23 enough years according to what the Legislature  
24 said and please grant him a parole date, or if  
25 you find him suitable set a term for him today.  
26 Thank you.

27           **PRESIDING COMMISSIONER BIGGERS:** Thank

1 you, very much, Ms. Rutledge. Now Mr. Plaza you  
2 have the opportunity to tell this Panel why you  
3 feel that you are suitable for parole.

4 **INMATE PLAZA:** Sorry. A little nervous.  
5 I believe first of all if I could I'd like to --  
6 I'd like to explain a couple of things. One  
7 thing that I have heard a lot of times being  
8 incarcerated that I didn't know 16 years ago --  
9 I had no knowledge of what personal disorders  
10 were because I was so caught up in my drug and  
11 alcohol habit. I didn't look at -- I didn't  
12 look at things as I should have, not normally  
13 anyways. I realize that being anti social at  
14 the time, you know, had me do things that any  
15 normal personal would not do. It wasn't due --  
16 I'm not making excuses. I never say that, you  
17 know, some people do -- but I don't say that the  
18 drugs or the alcohol committed the crime. I  
19 understand that I was the one that made the  
20 choice, and I take full responsibility for that.  
21 But I do -- I also want to say that being anti  
22 social, you know, my problems started at about  
23 15 years old, basically. Fifteen years old, I  
24 hit high school started hanging out with the  
25 wrong crowd. Running with the guys, you know,  
26 that I shouldn't have -- had no business hanging  
27 around. But because they all were in the same

1 predicament, whether they were raised by a  
2 single parent or, you know, were also seeking  
3 some kind of, you know, some kind of family.  
4 Some kind of acceptance. And, being that I was  
5 in that same category looking for acceptance,  
6 like I said earlier, I chose to hang around with  
7 people that had a lot of similarities to me.  
8 And because I chose to hang around with those  
9 people I was around things that, you know, I  
10 shouldn't have been around and drugs and alcohol  
11 became my biggest problem. And I understand  
12 that, you know, again a personal disorder border  
13 line, I crossed a lot of border lines but laws  
14 specifically because by purchasing drugs and  
15 alcohol I was naturally breaking laws, you know,  
16 to purchase these products. Again, you know,  
17 narcissistic because I hung around with this  
18 group I kind of got the feeling that I was, you  
19 know, I should have respect or I should have  
20 things coming just because of who I was or who I  
21 hung around with. But upon coming to prison I  
22 can honestly say that the very first thing that  
23 helped me out was being incarcerated, of course,  
24 but going to AA. When I first went to AA I  
25 started realizing when I got to Step Four  
26 especially because you have to take that moral  
27 inventory, I started realizing and seeing

1 things. And the sponsor at that time he taught  
2 us to look at things and to -- and to just, you  
3 know, call them what they are. If you're lying,  
4 then you're a liar. If you're stealing, then  
5 you're a thief. If you're doing -- whatever the  
6 circumstances might be. And so I did that, and  
7 I started looking at things and, you know, to be  
8 honest initially it was ugly and I -- some  
9 things you know you kinda don't want to accept  
10 because you want to think that, you know, you're  
11 not like that or you're better than that. I  
12 never wanted to accept to that, you know, that I  
13 had these problems, you know, because I thought,  
14 you know, hey I'm normal. There's nothing  
15 different about me than the next guy. But upon  
16 learning these things I started working on  
17 making that change, changing my life. AA led me  
18 to church. When I started going to church again  
19 that was a big help because the church started  
20 helping me again look at myself, and get an  
21 understanding. And, once I started to get that  
22 understanding I really began to make more  
23 change. And, as time went on -- I mean, I  
24 always got something out of the self-help  
25 groups. Every group had at least something to  
26 offer but as I went along I started learning, I  
27 started getting the insight of my crime of

1 myself and I started realizing as well the  
2 severity of my crime, you know, that it wasn't  
3 just, you know, something that happened, you  
4 know. It was way deeper than that. So, I  
5 started looking into these things. Upon looking  
6 into these things and really getting that  
7 understanding, Impact -- like I said earlier,  
8 the Impact was a great help to me. I started  
9 learning different things from Impact as well.  
10 Started getting a different perspective and  
11 getting more of a panoramic vision on life, you  
12 know, on everything that I'm involved in. What  
13 I do. It was a Captain who -- Captain Gega  
14 (phonetic), Unit Three Captain, she was the one  
15 who kind of, you know, gave me that opportunity  
16 as well to get into doing more than just the  
17 average guy that was in there. So, I started,  
18 you know, working with her. Working with her  
19 you see the problems in the paperwork. I was  
20 able when that riot broke out in the wing  
21 between the Nationals and the Bull Dogs, which  
22 is two different groups that are here -- even  
23 though I'm not a part of any of the groups I  
24 have a rapport because now people see me and  
25 they know that I'm the opposite of them. I'm  
26 constantly talking to people, trying to  
27 encourage them to be their own man, to make

1 their decisions, to not follow that peer  
2 pressure and the crowd and do those things. And  
3 so they -- they tell me, you know, they see  
4 integrity in me, and it's something that you  
5 don't see in just everybody or anybody. So  
6 having that has helped me a lot. I believe that  
7 through them programs -- you also -- there was  
8 another letter in the packet. It was from  
9 Victory Out Reach out of here in San Jose. They  
10 have a program also. Not just here in San Jose.  
11 They have it in every County. It doesn't  
12 matter. I talked to Ed Morales who's the  
13 Director there. He says it doesn't matter what  
14 County you go to, they have a program that's  
15 called Cease Fire and because of the education  
16 and the insight that I've gotten through the  
17 program he's told me, wherever you go, I want to  
18 use you because you can get to these people.  
19 You can reach out and talk to these people so  
20 that there's never -- again there doesn't have  
21 to be another Mr. Littlebull. There doesn't  
22 have to be somebody in my position, you know.  
23 So that's what I look to do now, is to stop them  
24 kind of things. Deter people, you know, doing  
25 them kind of things. I know it's in the  
26 Appellate version as well, even though no one  
27 read it here today, but you know that upon my

1 reaching the County Jail, you know, I was  
2 approached. Because, see, I was not<sup>x</sup>-- I was  
3 not an active member but I hung around with the  
4 crowd. So I was approached in the County Jail  
5 and, you know, was threatened. That was the  
6 County Jail. Upon reaching prison -- and it  
7 actually turned out to be one of the biggest  
8 favors they could do for me. I was approached  
9 in prison, and they told me, you're on your own.  
10 You don't run with us. We don't claim you. You  
11 don't claim us. Which was like I said, the  
12 biggest favor they could have done for me at  
13 that time. Because that was -- that was what  
14 got me started as well to make that change and  
15 not continue to try to pursue that road that I  
16 was on prior to that point. So, being that I  
17 was excommunicated -- it was good for me,  
18 because then, even though they told me you're on  
19 your own, and I know that in here not just  
20 anybody can be out on their own. You usually  
21 have to find a crowd or find a race or, you  
22 know, someone. You usually gotta, you know,  
23 hang out with somebody. But I was able to do  
24 it. I was able to go on my own. And I started  
25 to take the attitude too that, you know what,  
26 I'm not gonna pay attention what other people  
27 say. I don't care what, you know, what they say

1 or do because I want to be that person that I  
2 know I can be. And even my own mother told me  
3 that one time on visit six, seven years ago.  
4 She said, you know, you've turned into that man  
5 that I always wanted you to grow up to be, you  
6 know. I understand that today I have an  
7 opportunity to get out, come before you, and to  
8 put all these things in practice. As my  
9 attorney said, not just talk the talk but walk  
10 the walk. And, I have things in place. I have  
11 things, you know, set up where I can go and be a  
12 part of society and I can go and make a  
13 difference and hopefully like I said before get  
14 at, you know, not just youngsters, anybody.  
15 Whether they're young or old, and be able to  
16 share with them and explain to them, you know,  
17 educate them. You know, I'm all for  
18 intervention. Intervention is good. But,  
19 prevention is even better. You know,  
20 intervention the problem's already there. But  
21 prevention, the problems' not there yet or  
22 hasn't got to that point where, you know, it's  
23 too the extreme. So, I hope that today, you  
24 know, the Panel would surely take a look and  
25 consider me because I believe with the things  
26 that I have, with all the support system that I  
27 have, with the plans and the goals that I have



88

1 -- and it's not something that I did all my  
2 life, but I do have plans and goals. And I  
3 believe those plans and goals that I have now  
4 are going to be the things that help me to  
5 succeed, and I have no problem with any kind of  
6 parole to the extreme conditions. Testing, you  
7 know. Whatever I need to do. I have no problem  
8 whatsoever. And so I -- I just ask if, you  
9 know, you Panel members today would consider me  
10 as being suitable and I thank you and I do want  
11 also would like to say that this packet here was  
12 not a personal attack on you. It was not meant  
13 to be, you know, in any way personal. I do have  
14 to say it's my first one and being unfamiliar I  
15 did allow other people to kind of give me a  
16 little helping hand, and if there was anything  
17 that, you know, was not necessary or was an  
18 overkill it was not done intentionally and once  
19 my final statement because I want to make sure  
20 that you know is that, again, I take full  
21 responsibility for the taking of the life of Mr.  
22 Littlebull and I thank you.

23 PRESIDING COMMISSIONER BIGGERS: We will  
24 recess at this point.

25 R E C E S S

26 --oOo--

27

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER MEJIA: We're back on  
4 record for our decision -- on tape.

5 PRESIDING COMMISSIONER BIGGERS: Let the  
6 record reflect that everyone that was in the  
7 room prior to us recessing for deliberations are  
8 now back in the room. The Panel has reviewed  
9 all information received from the public and  
10 relied on the following circumstances in  
11 concluding the prisoner is not suitable for  
12 parole and would pose an unreasonable risk of  
13 danger to society or a threat to public safety  
14 if released from prison. The offense was  
15 carried out in an especially cruel and callous  
16 manner in that this was a drive-by shooting  
17 where a Mr. Patrick Littlebull, the victim, was  
18 shot and killed as a retaliatory type crime  
19 based on what was in the Appellate Decision.  
20 This offense was carried out in a calculated  
21 manner, and I'll read from the -- that the --  
22 decision that Mr. Plaza was

23 "-- driving slowly with his lights  
24 out thus eliminating attention to  
25 his approaching car was strong  
26 evidence of prior planning. The

1           approach without lights is  
2           factually similar to lying in  
3           waiting and illustrates a  
4           deliberate plan by the occupants  
5           of the car to approach to victim  
6           unnoticed so that the killing  
7           could be accomplished from a  
8           position of surprise and  
9           advantage."

10   The motive for the crime was very trivial in  
11   that it was a gang related shooting, and these  
12   conclusions was drawn from the Statement of  
13   Facts from the Appellate Decision. You have no  
14   -- your criminal record was of no significance  
15   to us because you had very little if any. You  
16   have programmed extremely well. You should be  
17   commended for no disciplinary actions. Your  
18   psychiatric evaluation was favorable. Your  
19   parole plans were favorable. Your 3042 response  
20   from the District Attorney was opposed to your  
21   -- a finding of parole suitability, and you have  
22   numerous letters of support. The Panel  
23   struggled with this for quite some time,  
24   basically because of a couple things that I will  
25   go over with you right now. First of all, the  
26   signs of remorse for the victim. You say you  
27   JESUS PLAZA   H-12371 DECISION PAGE 2           05/01/06

1 take full responsibility for the crime, but when  
2 Deputy Commissioner Mejia started talking to you  
3 about the crime and what you took from the  
4 victim, you went off and you started talking  
5 about collateral effects of the families and all  
6 the others but you never mentioned about the  
7 victim. You need to -- and with that, that  
8 gives us an indication that you really haven't  
9 taken -- you're minimizing your involvement in  
10 the crime by not knowing exactly what happened  
11 to the victim. You need to get that out. We  
12 -- as I said, we talked about it for quite some  
13 time because we just feel that you're not --  
14 it's -- you're just taking responsibility for  
15 the crime is superficial, and we need to get  
16 genuine remorse. So, the big thing is remorse  
17 for the victim. We also feel that your gains  
18 are recent, as illustrated by when we talked to  
19 your earlier and the District Attorney even  
20 brought this up and I went back and went over  
21 the Appellate Decision as well as the sentencing  
22 thing for -- you indicated initially that you  
23 were not involved with the shooting. Then you  
24 say you were when they told you about your  
25 vehicle, and that's when you mentioned about the  
26 gun. They found the gun within (indiscernible).  
27 JESUS PLAZA H-12371 DECISION PAGE 3 05/01/06

1 We note that you are doing extremely well  
2 programming, but we just feel that you need to  
3 have more time. You should be commended for  
4 your program that you have been involved with,  
5 your Vocational Dry Cleaning, your Air  
6 Conditioner Refrigerator, AA and NA, and the  
7 Impact and Anger Management courses that you are  
8 working with right now. In a separate decision,  
9 the hearing Panel thought it's not reasonable to  
10 expect that parole will be granted in a hearing  
11 in the following two years. Again, the crime  
12 itself was just especially cruel and callous in  
13 that you (indiscernible) on an individual who  
14 was vulnerable. He didn't have a weapon; he's  
15 walking down the street, and you and your  
16 co-defendant shot him. And, we realize that you  
17 only drive the vehicle, but the mere fact that  
18 you were there with your lights off is a strong  
19 indication that you knew what was going to take  
20 place. The -- and the motive for the crime as  
21 we talked about earlier, was very trivial in  
22 that this was a gang retaliation. All  
23 indications point to this was a gang  
24 retaliation. Once you've become -- once you've  
25 come to grips with what transpired, allow  
26 yourself to not minimize the involvement of what  
27 JESUS PLAZA H-12371 DECISION PAGE 4 05/01/06

1 think you'll be okay, because you're definitely  
2 on the road to getting a date. But you've got  
3 to take that remorse to the victim, you can't  
4 generalize. You said I take full  
5 responsibility. You got to take it from not the  
6 family. You've got to take responsibility for  
7 Patrick.

8 INMATE PLAZA: I understand.

9 PRESIDING COMMISSIONER BIGGERS: Mr.  
10 Mejia?

11 DEPUTY COMMISSIONER MEJIA: No further  
12 comments from me.

13 PRESIDING COMMISSIONER BIGGERS: Okay.  
14 Good luck to you. That concludes the hearing.  
15 The time is now ten minutes to --

16

17

18

19

20

21

22

23 PAROLE DENIED TWO YEARS

AUG 29 2006

24 THIS DECISION WILL BE FINAL ON: \_\_\_\_\_

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT  
26 DATE, THE DECISION IS MODIFIED.


27 JESUS PLAZA H-12371 DECISION PAGE 5 05/01/06

CERTIFICATE AND  
DECLARATION OF TRANSCRIBER

I, RUBY M. DOUGHERTY, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total TWO in number and cover a total of pages numbered 1 - 93, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the INITIAL PAROLE CONSIDERATION HEARING for JESUS PLAZA, CDC NO. H-12371, on MAY 1, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated MAY 30, 2006, at Sacramento, California.

  
RUBY M. DOUGHERTY  
TRANSCRIBER  
PETERS SHORTHAND REPORTING

# EXHIBIT B



LIFE PRISONER EVALUATION REPORT  
INITIAL PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR  
ADDENDUM

PLAZA, JESUS

H12371

This addendum is being submitted as a correction to some inaccuracies that were found in the Board Report for Plaza's Initial Parole Consideration Hearing.

On Page 2 of the report under Aggravating Circumstances: it says use of weapon: Gun, 9mm. That information was taken from the POR pg. 2. In the Court Transcripts for the Court of Appeal of the State of California Second Appellate District Division Two Page 3, it states that a .38 revolver was found in a hollow space underneath the dashboard of the suspects. A ballistic test indicated that an expended bullet found at the scene on Loveland Street was fired from the gun that was recovered.

Under the Preconviction Factors: C. Personal Factors: The Board Report states that Plaza was born 2/7/65 to Caroline and Jessie Plaza. This should be corrected as follows: Plaza was born 3/7/65 to Caroline and Jesus Plaza. Plaza also said that his marriage took place on 5/12/84 and not 5/7/84.

Postconviction Factors: Should read as follows; Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary, pre-voc. and Computer Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

**Inmate Copy**

Sent to Inmate on 11/29/05

T. Verdesoto 11-16-05  
T. Verdesoto Date  
Correctional Counselor I

D. Carnazzo 11-16-05  
D. Carnazzo Date  
Correctional Counselor II

I. Guerra 11-16-05  
I. Guerra Date  
Facility Captain

D. S. Levorse 11-18-05  
D. S. Levorse Date  
Classification and Parole Representative

LIFE PRISONER EVALUATION REPORT  
INITIAL PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR

PLAZA, JESUS

H12371

I. COMMITMENT FACTORS:

- A. Life Crime: Murder 1<sup>st</sup>, (PC 187), Los Angeles County Case #VA004108.  
Sentenced: 25 years to Life. Weapon: Gun. MEPD: 1/25/07. Received in  
CDC: October 9, 1991. Victim: Patrick Littlebull, age: unknown.

1. Summary of Crime: The defendant, Jesus Plaza, and another subject were seen driving a vehicle near the victim, Patrick Littlebull. A witness heard a series of shots and saw the victim Patrick collapse onto the floor. Officers arrived at the scene of a residential street in Bell Gardens and found Patrick lying on the floor in a puddle of blood. Paramedics arrived shortly after and pronounced him dead at the scene. Victim's autopsy indicated that his death resulted from a single gunshot wound to the right lateral side of his chest.

Several witnesses gave officers information about the suspects vehicle, and approximately 1 hour later, police saw the vehicle and detained the defendant along with a second suspect. Officers observed a .9mm casing on the floor board of the vehicle in front of the passenger. Both Plaza and his companion were arrested and later evaluated for evidence of gunshot residue. (Source: POR pg 2, 3 &4).

2. Prisoner's Version: First and foremost to each family member and friend of Mr. Littlebull. Knowing that there are no special, no specific, nor any amount of words that could right the wrong I did. Nor can any words equal or be greater than the crime in a good way, I wholeheartedly apologize yet due to multiple counseling programs and self help programs that I have seeked out throughout my incarceration. I've gained knowledge and an understanding of my crime and true remorse, and so I take full responsibility for my choices and actions in the commitment of this crime and also stipulate to the P.O.R. as being true and accurate.

3. Aggravating/Mitigating Circumstances:

- a. Aggravating Factors:

INMATE COPY

PLAZA, JESUS

H12371

CTF-SOLEDAD

DEC/2005

SENT TO IM ON 9/22/05

- ❖ Victim was particularly vulnerable.
- ❖ Prisoner had opportunity to cease but continued with crime.
- ❖ Murder was senseless and served no purpose in completing the crime.
- ❖ Use of weapon: Gun, .9mm.
- ❖ Nature of crime exhibited viciousness, cruelty or callousness.

b. Mitigating Factors:

- ❖ Prisoner has minimal or no history of criminal behavior.

B. Multiple Crime(s): N/A.

1. Summary of Crime: NA.

2. Prisoner's Version: NA

II. PRECONVICTION FACTORS:

A. Juvenile Record: None noted in Central File.

B. Adult Convictions and Arrests:

- ❖ 07/16/83 PC 594 (a) Vandalism.
- ❖ 09/17/83 PC 187 Attempted Murder (no disposition).
- ❖ 04/02/84 PC 594 Malicious Mischief/Vandalism.

C. Personal Factors: Plaza was born 2/7/65 to Caroline and Jessie Plaza. He has four sisters and a brother. Plaza graduated from high school 5/17/83 from Vail High in Montebello, CA, and then married Guadalupe Falcon on 5/7/84 and they have three children, Ramona, and Justina, and Izaiah.

III. POSTCONVICTION FACTORS:

A. Special Programming/Accommodations: N/A.

B. Custody History: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92 Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary and pre-voc. Plaza was again transferred to CSP LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the dry cleaning and voc electrical shop. On 12/16/97 he was transferred to Avenal, and on 3/13/98 he was transferred to

CTF Soledad. While at CTF, Plaza was assigned to PLA Textiles. On 12/31/98 Plaza went to CMC-E as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF, Plaza has been assigned as a porter, a dental assistant and has worked in the culinary.

- C. **Therapy and Self-Help Activities:** Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir. Refer to Post Conviction Progress Reports for more details.
- D. **Disciplinary History:** Plaza has remained disciplinary free throughout his incarceration.
- E. **Other:** N/A.

#### IV. **FUTURE PLANS:**

- A. **Residence:** Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr. Simi Valley, California 93063. His phone number is (805) 581-6323
- B. **Employment:** Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone #(805) 578-7303.
- C. **Assessment:** In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing.

#### V. **USINS STATUS:** NA.

#### VI. **SUMMARY:**

- A. Prior to release the prisoner could benefit from:
1. Continuing to be disciplinary free.
  2. Participation in self-help and therapy programs.
  3. Upgrading vocationally and educationally.

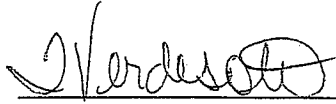
LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR

4

- B. This report is based upon an interview with the prisoner on 9/1/05 lasting approximately 1 hour(s) and a complete review of the Central File lasting 3 hours(s).
- C. Per the Olson Decision, Plaza was afforded an opportunity to examine his Central File on 9/1/05, Plaza did examine his Central File. (Refer to CDC 128-B dated 9/1/05 in the General Chrono Section of the Central File.)
- D. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR

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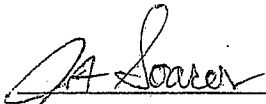


9-20-05

T. Verdesoto

Date

Correctional Counselor I

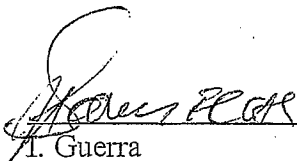


9/21/05

J. Soares

Date

Correctional Counselor II

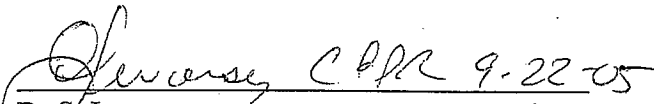


9/21/05

A. Guerra

Date

Facility Captain



9-22-05

D. S. Levorse

Date

Classification and Parole Representative

# EXHIBIT C



**MENTAL HEALTH EVALUATION FOR  
THE BOARD OF PRISON HEARINGS  
May, 2006 Lifer Calendar**

**CORRECTIONAL TRAINING FACILITY SOLEDAD  
APRIL, 2006**

**NAME:** PLAZA, JESUS  
**CDC#:** H-12371  
**DOB:** 3/7/65  
**OFFENSE:** PC 187 MURDER, FIRST DEGREE  
**DATE OF OFFENSE:** 5/26/90  
**SENTENCE:** 25 YEARS TO LIFE  
**EVALUATION DATE:** 4/16/06  
**MEPD:** 1/25/07

**I. IDENTIFYING INFORMATION:**

Mr. Jesus Plaza is a 41 year old, first term, Hispanic, married male from Los Angeles County. He is an active Christian. He has served 16 years on his sentence.

**SOURCES OF INFORMATION:**

This report is based upon a single 90 minute interview, plus review of the central and medical files.

**II. DEVELOPMENTAL HISTORY:**

When questioned about prenatal and perinatal issues, he stated that he was born at General Hospital, and his birth was normal. He progressed through developmental milestones in a normal manner. He is the second of four children. There is no history of cruelty to animals, enuresis or arson. He was never abused as a child, either sexually, physically or emotionally. He did have accidents as a child. One time he fell off of a pipe, injuring his leg on a fish tank. At the age of eleven he was involved in a car accident and injured his left knee which had recently been fixed through surgery.

**PLAZA, JESUS****H-12371****4/15/06****PAGE 2****III. EDUCATION:**

He attended public school and graduated from Vail High School in Montebello. He was never suspended or expelled. He has continued his education by attending college classes. He is attending Coastline Junior College at this time by correspondence, working towards his AA degree. He has 15 more credits until he gets his AA degree.

**IV. FAMILY HISTORY:**

Mr. Plaza's biological parents separated when he was about four years of age. He was raised primarily by his mother and maternal grandparents. His mother is currently employed by St. Francis Hospital, and his father worked for years as a mechanic and an auto body repairman. He is now 66 years of age and has retired. He has one older sister that works for General Electric in Pennsylvania, a younger sister who is mainly retarded who lives with his mother, and one younger brother who is married and working as a sales manager of a container corporation. There is no family history of mental illness, of drug abuse, of alcoholism, or of legal problems.

**V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:**

Mr. Plaza is heterosexual. There is no history of high risk behavior or of problems.

**VI. MARITAL HISTORY:**

He has been married one time. He was married on 5/12/84 to Guadalupe who lives in Whittier. There are three children. Ramona, 21 years of age, is working as a R.N. at St. Francis Hospital. Justina is 19 and is attending Cerritos College. Isaiah is 10 years of age. His marriage is intact, and his wife is supportive. He indicated that he has a very close relationship with his wife and children. They keep in close contact by correspondence, phone calls and several visits a year.

**VII. MILITARY HISTORY:**

There is no military history.

PLAZA, JESUS

H-12371

4/15/06

PAGE 3

**VIII. EMPLOYMENT/INCOME HISTORY:**

Right after he graduated from high school at the age of 18, he went to work for Century Plastics, where he worked for 4 ½ years. This company made fiberglass products for airplanes. He was the lead man there. In 1987, he went next door to work for Century Arrow doing the same kind of work. These two companies are owned by the same people. One year before the commitment offense, he began working for an asbestos abatement company as a laborer.

In the institution, he has obtained several trades. He has completed Vocational Dry Cleaning, Vocational Air Conditioning, Refrigeration and Heating, Vocational Meat Cutter, and he also has completed a correspondence course as a home inspector. Currently he is working as a meat cutter in culinary.

**IX. SUBSTANCE ABUSE HISTORY:**

Mr. Plaza stated that he did have an alcohol and drug problem from the ages of 15 to 25. He would drink alcohol primarily on weekends, because he had to work during the week. He smoked some marijuana. He also snorted cocaine about three times a week at the age of 16. At the age of 20, he began using cocaine every other day. He attends Alcoholics Anonymous and Narcotics Anonymous. He attends as often as he can, and he has been going steadily to these programs for the last 13 or 14 years.

**X. PSYCHIATRIC AND MEDICAL HISTORY:**

There is no psychiatric history. There is no history of serious hospitalizations, other than his surgery on his left knee. There is no history of serious accidents or of head injuries or seizures. His health is good.

**XI. PLANS IF GRANTED RELEASE:**

Mr. Plaza plans to return to his old employer in Simi Valley. He also will be able to live with his brother in that area. He will be compliant with all parole rules and regulations. He does have strong family support in the community. The prognosis for successful community living in this case is excellent.

PLAZA, JESUS  
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PAGE 4

## CLINICAL ASSESSMENT

### XII. CURRENT MENTAL STATUS/TREATMENT NEEDS

Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts degree. His grades are very good. Also, he has obtained a certificate as a home inspector from a professional career development institute in Georgia by correspondence. In addition, he has completed several courses towards self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

### CURRENT DIAGNOSTIC IMPRESSION

Axis I: Drug and alcohol use by history  
Axis II: No personality disorder  
Axis III: No physical disorder  
Axis IV: Life term incarceration  
Axis V: Current GAF: 95

### XIII. REVIEW OF LIFE CRIME

Mr. Plaza discussed the details of the commitment offense. He accepts full responsibility for this offense. He feels very badly that the victim died. He is fully aware that the victim's family has suffered greatly at the loss of their father and husband. The fact that gunshots were fired was a total surprise to Mr. Plaza. He had no idea that this was going to happen, and there certainly was no intent on his part. He is very aware of the repercussions of this offense. Even today his wife, children and mother are being watched and approached about this situation

PLAZA, JESUS  
H-12371  
4/15/06  
PAGE 5

by gang members. He is very concerned about their welfare. All of these situations are a result of the commitment offense. Needless to say Mr. Plaza feels deep feelings of sorrow, remorse and grief over this situation.

At the time of the commitment offense, Mr. Plaza had been using cocaine and alcohol. His judgment at that time was impaired by his use of these substances. At the time of the commitment offense he was actually under the influence. However, after 16 years there is no evidence of any involvement in drugs or in alcohol. He has continuously attended Alcoholics Anonymous and Narcotics Anonymous over the years. Since he has become Christian, he has strong values against the use of drugs or alcohol at this time in his life. He is certainly familiar with the destructive effects of this involvement. As a result, he has determined to never become involved in drugs or alcohol again in his life. This information is of historical importance only because it is not currently a diagnostic problem.

#### **XIV. ASSESSMENT OF DANGEROUSNESS**

- A. In considering potential for dangerous behavior in the institution, Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time at this prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. Due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

- B. In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-

PLAZA, JESUS

H-12371

4/15/06

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Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

- C. At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this is no longer an issue. Therefore, there are no significant risk factors in this case.

**XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS**

There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon his release. He has very strong family support in the community. All of these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All of these factors indicate that his prognosis for successful adjustment in the community is excellent.

*M. Macomber, Ph.D.*

M. Macomber, Ph.D.  
Correctional Psychologist  
Correctional Training Facility, Soledad

*B. ZIKA, Ph.D.*

B. ZIKA, Ph.D.  
Senior Psychologist  
Correctional Training Facility, Soledad

D: 4/15/06

T: 4/19/06

**EXHIBIT B**



**FILED**  
LOS ANGELES SUPERIOR COURT

SEP 16 2007

JOHN A. CHAMBERLAIN, CLERK  
BY Joseph M. Falido DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

<p>In re JESSE PLAZA,  Petitioner,  On Habeas Corpus</p>	}	<p>Case No.: BH004502  ORDER RE: PETITION FOR WRIT OF HABEAS CORPUS</p>
--	---	---

The Court has read and considered the Petition for Writ of Habeas Corpus filed on February 23, 2007 by the Petitioner. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the determination that the Petitioner presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4<sup>th</sup> 616, 667.

The Petitioner was received in the Department of Corrections on October 9, 1991 after a conviction for murder in the first degree with a firearm. He was sentenced to 25 years to life. His minimum parole eligibility date was January 25, 2007. The record reflects that on May 26, 1990, the Petitioner was driving with fellow gang members on a street known to be the territory of a rival gang. The Petitioner drove slowly, with the headlights turned off, as he approached a



1 the victim, a rival gang member, who was standing in front of a house. As the Petitioner drove  
2 by, his accomplice fired several shots at the victim. The victim was shot and killed. The  
3 Petitioner then sped away. A witness saw who heard the gunshots and saw the Petitioner's car  
4 speed away called the police and the Petitioner and his accomplices were pulled over and  
5 arrested.

6 The Board found the Petitioner unsuitable for parole after his first parole consideration  
7 hearing held on August 29, 2006. The Petitioner was denied parole for two years. The Board  
8 concluded that the Petitioner was unsuitable for parole and would pose an unreasonable risk of  
9 danger to society and a threat to public safety. The Board based its decision primarily upon his  
10 commitment offense.

11 The Court finds that there is some evidence to support the Board's finding that the  
12 Petitioner's offense was carried out in a calculated and dispassionate manner. Cal. Code Regs.,  
13 tit. 15, §2402, subd. (c)(1)(B). The Petitioner drove slowly with his headlights turned off, so as  
14 to avoid detection as he approached the victim. This demonstrates that the shooting was planned  
15 and that the Petitioner was deliberately driving toward the victim for that purpose. Additionally,  
16 the Petitioner's accomplice was armed with a gun for the purpose of shooting the victim.  
17 Regardless of whether the Petitioner himself shot the victim, he was acting in concert with his  
18 accomplice and, therefore, the shooting is imputed to him.

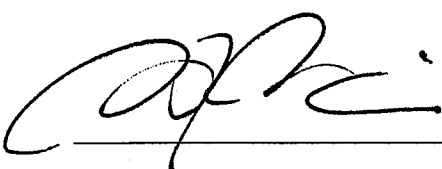
19 The Court also finds that there is some evidence to support the Board's finding that the  
20 Petitioner's motive was very trivial in relation to the offense. Cal. Code Regs., tit. 15, §2402,  
21 subd. (c)(1)(B). The Petitioner and his accomplice shot the victim merely because he was a rival  
22 gang member. There is no evidence that the victim had threatened or harmed the Petitioner in  
23 any way. Gang rivalry is a very trivial motive for killing a man.

24 Additionally, the Court finds that the Board did not err in denying the Petitioner parole  
25 for a period of two years. The Board must articulate reasons that justify a postponement, but  
26 those reasons need not be completely different from those justifying the denial of parole. See *In*  
27 *re Jackson* (1985) 39 Cal.3d 464, 479. The Board indicated that the Petitioner was denied parole  
28 for two years because his commitment offense was calculated and dispassionate and against a

1 particularly vulnerable victim; his motive was trivial; and he failed to show adequate remorse for  
2 the victim. These reasons were sufficient to justify a two-year denial.

3 Accordingly, the petition is denied.

4  
5  
6 Dated: 9/6/08

  
STEVEN VAN SICKLEN  
Judge of the Superior Court

7  
8 The clerk to give notice.



**Send copy of order to:**

Department of Justice – State of California  
Office of the Attorney General  
300 S. Spring St.  
Los Angeles, CA 90099-9126

Petitioner

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp <b>FILED</b> LOS ANGELES SUPERIOR COURT SEP 07 2007 JOHN A. CLARKE, CLERK BY <u>Joseph M. Pulido</u> DEPUTY Joseph M. Pulido
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		
PLAINTIFF/PETITIONER:  JESSE PLAZA		
<b>CLERK'S CERTIFICATE OF MAILING</b> CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		CASE NUMBER:  BH004502

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- ☐ Order Extending Time  
☐ Order to Show Cause  
☐ Order for Informal Response  
☐ Order for Supplemental Pleading

- ☒ Order re: Writ of Habeas Corpus  
☐ Order  
☐ Order re:  
☐ Copy of Petition for Writ of Habeas Corpus for the Attorney General

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

September 7, 2007  
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Joseph M. Pulido, Clerk  
Joseph M. Pulido

Jesse Plaza  
H-12371  
Correctional Training Facility  
P.O. Box 689  
Soledad, California 93960-0689

Department of Justice- State of California  
Office of the Attorney General  
300 South Spring Street  
Los Angeles, California 90013

# **EXHIBIT C**

## **Part 1 of 2**

MC-275

Name JESSE PLAZAAddress CTF CENTRAL F-338UP.O. BOX 689SOLEDAD, CA 93960-0689CDC or ID Number H-12371COURT OF APPEALSSECOND APPELLATE DISTRICT

(Court)

## PETITION FOR WRIT OF HABEAS CORPUS

JESSE PLAZA,  
 Petitioner  
 vs.  
BEN CURRY, Warden,  
 Respondent  
Correctional Training Facility

No. \_\_\_\_\_  
 (To be supplied by the Clerk of the Court)

**INSTRUCTIONS—READ CAREFULLY**

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Page 1 of 6

This petition concerns:

☐ A conviction

☒ Parole

☐ A sentence

☐ Credits

☐ Jail or prison conditions

☐ Prison discipline

☒ Other (specify): Illegal finding of unsuitability by the Board of Parole Hearings.

1. Your name: Jesse Plaza
2. Where are you incarcerated? Correctional Training Facility, Soledad, CA 93960-0689
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

First Degree Murder

- b. Penal or other code sections: Penal Code §187
- c. Name and location of sentencing or committing court: Los Angeles Superior Court, Norwalk, CA
- d. Case number: VA004108
- e. Date convicted or committed: 7-20-91
- f. Date sentenced: 9-28-91
- g. Length of sentence: 25 years to life
- h. When do you expect to be released? "unknown"
- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:  
Stephen Garcia, Attorney at Law, address unknown

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

## 6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

THE NINTH CIRCUIT COURT OF APPEALS HAS FOUND THAT THE MANDATORY LANGUAGE OF P.C. 3041  
(b) IMPOSES AN AFFIRMATIVE OBLIGATION BY THE CALIFORNIA BOARD OF PAROLE HEARINGS  
TO GRANT PAROLE, WHICH CREATES A LEGALLY COGNIZABLE LIBERTY INTEREST IN PAROLE  
AND A PRESUMPTION THAT PAROLE RELEASE WILL BE GRANTED. THERE IN NO EVIDENCE HAVING  
AN "INDICIA OF RELIABILITY" THAT PETITIONER IS A CURRENT OR UNREASONABLE RISK TO  
SOCIETY. THE HEARING AND DECISION BY THE CALIFORNIA PAROLE BOARD WAS ARBITRARY AND  
CAPRICIOUS IN VIOLATION OF PETITIONER'S STATE AND FEDERAL DUE PROCESS RIGHTS.

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Petitioner, JESSE PLAZA, petitions for a writ of habeas corpus and  
 by this verified petition alleges as follows:

## I

Petitioner is in custody of the California Department of Corrections  
 at the Correctional Training Facility in Soledad, California serving  
 a term of 25 years to life following his conviction in 1991 in Los Angeles  
 County Superior Court Case No. VA004108 wherein petitioner was convicted  
 of first degree murder in violation of Penal Code section 187. Petitioner  
 was received by the Department of Corrections on October 9, 1991, when  
 his life term commenced. This petition is intended to give meaning to  
 Petitioner, JESSE PLAZA, (hereinafter "Petitioner"), sentence of 25 years  
 to life for 'first degree murder'. On May 1, 2006, Petitioner went before  
 the Board of Parole Hearings for his initial parole. (Petitioner's minimum

## b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)



1 eligible parole date is 1-25-07) for a finding of suitability, and the  
2 setting of his term uniformly. Petitioner submits that the Board of  
3 Parole Hearings (hereafter "Board") regulations, California Code of  
4 regulations, Title 15, section 2402(a) DEMANDS that the Board set a  
5 release date unless Petitioner currently presents an unreasonable risk  
6 of danger to public safety. Petitioner submits that there is nothing  
7 in the Board's decision indicating the basis for that belief, which  
8 Petitioner discusses and proves *infra*.

10 II

11 On May 1, 2006, the Board conducted petitioner's Initial Parole  
12 Consideration Hearing. The Board found petitioner unsuitable and denied  
13 parole for a period of two years. (Exhibit "A" 89-93) In support of its  
14 findings that petitioner currently posed an unreasonable risk to society,  
15 the Board found that the "offense was carried out in an especially cruel  
16 and callous manner", "carried out in a calculated manner", "The motive  
17 for the crime was very trivial in that it was a gang related shooting",  
18 and the unsupported conclusion that petitioner has refused to take  
19 responsibility for his actions. Petitioner was, however, commended for  
20 programming extremely well, commended for remaining disciplinary free,  
21 obtaining a positive psychological evaluation, participating in AA and  
22 NA, completing two vocations and securing positive parole plan. (Exhibit  
23 "A", p. 89-93). Despite all the evidence supporting a granting of parole,  
24 the Board found petitioner unsuitable for a grant of parole based on  
25 the commitment offense, including and unsupported conclusion that  
26 petitioner tries to minimize his responsibility.

27 //

III

Petitioner alleges that there was no evidence to support the Board's finding that he poses a current unreasonable risk if released. In fact, all current, reliable evidence presented to the Board shows that petitioner poses no risk if released, Petitioner further alleges that the Parole Board violated petitioner's statutory rights and his Fifth and Fourteenth Amendments (due process rights), when it refused to grant petitioner a parole date despite evidence supporting a finding that petitioner posed no unreasonable risk of harm. Furthermore, his continued confinement constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

IV

Petitioner also submits the Board spoke in meaningless generalities and never specified the exact nature of Petitioner's current character that would make Petitioner a danger to society. And by not doing so, the Board violated Penal Code §3041, which dictates that the Board shall normally set a parole release date at Petitioner's Initial Hearing. Petitioner, further submits that the issue raised in this Petition are of constitutional dimension, questioning the legality of Petitioner's confinement. An indeterminately sentence prisoner must be paroled when there is no evidence that Petitioner is a current or unreasonable risk to society. The California Supreme Court has recognized that parole applicants' possess a "protected liberty interest under the California Due Process Clause". (*In re Rosenkrantz*, (2002) 29 Cal.4th 616, 660; cf. *McQuillion v. Duncan* (9th Cir. 2002) 306 F.3d 895, 901. It is well established that Courts may review the Board's parole decisions under

1 a highly deferential standard of review, and must reverse those decisions  
2 if there is not "some evidence" in the record to support them.  
3 (Rosenkrantz, supra 29 Cal.4th at 667; In re Smith (2003) 109 Cal.App.4th  
4 489. Petitioner submits there is no evidence that Petitioner is currently  
5 a threat to public safety.

6  
7 PETITIONER NOW SUBMITS THE FOLLOWING POINTS AND AUTHORITIES IN SUPPORT  
8 OF THIS PETITION FOR WRIT OF HABEAS CORPUS

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 THE MURDER STATUTES TOGETHER WITH THE PAROLE STATUTES  
4 IMPOSE AN AFFIRMATIVE OBLIGATION UPON THE BOARD TO  
5 SET PAROLE DATES IN CASES LIKE THIS ONE. THE  
6 REGULATIONS IMPLEMENT THOSE STATUTES

7 Under the Board's regulations, pursuant to Penal Code  
8 §3041(b), a prisoner may be found unsuitable for parole if  
9 the Board determines that the offense or a past offense and  
10 its timing is of such gravity that a longer period of  
11 incarceration is required in the interest of public safety.  
12 The determination is made based on the standards set forth  
13 by the Board's regulations. The principle guidelines in making  
14 the determination is Cal. Code. Regs. §2401 (c)-(1-6):

15 (1) Commitment Offense. The prisoner committed the offense in  
16 an especially heinous, atrocious or cruel manner. The factors  
17 to be considered include:

18 (A) Multiple victims were attacked, injured, or killed  
19 in the same or separate incidents.

20 (B) The offense was carried out in a dispassionate and  
21 calculated manner, such as an execution-style murder.

22 (C) The victim was abused, defiled or mutilated during  
23 or after the offense.

24 (D) The offense was carried out in a manner which  
25 demonstrated an exceptionally callous disregard for human  
26 suffering.

27 //

(E) The motive of the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

Circumstances (1), (2), and (4) reasonably reflect the sole specified and authorized statutory exception to setting parole release dates, for the current or a past convicted offense(s).

~~Factor (E) of Circumstances (1), however, pertaining to the~~  
motive of the crime as being inexplicable, although typically stated by the board as a factor for denying parole, is a rare circumstance, as there is almost always, as here, an explanation

as to why the offense occurred. Whether the motive was trivial is another matter. As one court noted:

"The epistemological and ethical problems involved in the ascertainment and evaluation of motive are among the reasons the law has sought to avoid the subject. As one authority has stated, "[hardly any part of penal law is more settled than that motive is irrelevant." (Hall, General Principles of Criminal Law (2d ed. 1960) at p. 88; see also Husak, *Motive and Criminal Liability* (1989) vol. 8, No. 1, *Crim. Justice Ethics* 3.)"

The court further explained:

"The offense committed by most prisoners serving life sentences is, of course, murder. Given the high value our society places upon life, there is no motive for unlawfully taking the life of another human being that could not be deemed "trivial". The Legislature has foreclosed that approach, however, by declaring that murderers with life sentences must "normally" be given release dates as they approach their minimum eligible release dates. (Pen. code, §3041, subd. (a).") (In re Scott, 119 Cal.App.4th 871, 892-893.)

It is therefore questionable whether the factor has any evidentiary value in this case. If the motive was indeed inexplicable "A person whose motive for a criminal act can not be

explained or is unintelligible is therefore unusually unpredictable and dangerous." (Id.) Such is not the case here.

The primary circumstance and factors considered to make the determination, §2402(d)(1)(B) and (D), have been explained by the courts. To qualify for the authorized exception, an offense must be exceptionally egregious. The court of appeal characterized this as follows:

"In re Van Houten (2004) 116 Cal.App.4th 339 [10 cal.Rptr.3d 406] illustrates the sort of gratuitous cruelty required. The prisoner in that case was involved in multiple stabbings of a woman with a knife and bayonet. While she was dying, the victim was made aware her husband was suffering a similarly gruesome fate. As stated by the court, "[t]hese acts of cruelty far exceeded the minimum necessary to stab a victim to death." (Id. at p. 351) Other examples of aggravated conduct reflecting an "exceptionally callous disregard for human suffering," are set forth in Board regulations relating to the matrix used to set base terms for life prisoners (§2403, subd. (b)); namely, "torture," as where the "[v]ictim was subjected to the prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death, " and ~~"severe trauma."~~ as where ~~"[d]eath resulted from~~ severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a

weapon not resulting in immediate death or actions calculated to induce terror in the victim." (Ibid.) (In re Scott, supra, 119 Cal.App.4th 871, 892.)

In this case there is no evidence of gratuitous cruelty or torture such as described in the foregoing. Moreover, even in such cases, involving those exceptional factors, the Board's regulations and suggested terms indicate parole suitability after serving the indicated base terms.

Circumstances (3) of the unsuitability factors, "Unstable Social History" appears to be related to the commission of violent past offenses and gravity thereof. It is not a factor in this case.

Circumstance (5), "Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense." is not applicable in this case, and the Psychological Report does not indicate any such assessment.

Circumstance (6), "Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail." This should reasonably relate to misconduct like that which may result in rescission proceedings as is enumerated in Cal. Code Regs., tit. 15, §2451, or more properly, be punished by the provisions of Cal. Code Regs., tit. 15, §2410, which provides for "Postconviction Credit", and not used as a substitute for statutory "suitability" provisions which specify only the gravity of the current or a past offense to deny parole.

This "circumstance" is often relied upon by the Board to deny parole to indeterminately sentenced prisoners repeatedly and



for years at a time. Yet, determinately sentenced prisoners might suffer only the loss of a few months of credit, once; for the same misconduct, which they can even get restored. As such, the Board's determinations that rely on such circumstances to deny parole, particularly beyond the indicated matrix base terms, is unauthorized by Penal Code 3041, is unfair, unreasonable and constitutes unequal punishment for the same conduct. A blatant violation of Petitioner's due process rights protected by the 5th & 14th Amendments of the United States Constitution.

RELIANCE ON THE COMMITMENT OFFENSE TO DENY PAROLE AT  
ALL INITIAL HEARINGS AND ALMOST ALL SUBSEQUENT HEARINGS  
IS INCONSISTENT WITH STATUTORY LANGUAGE AND CONTRARY TO  
SUPREME COURT AUTHORITY

The Board's reliance on the commitment offense to deny parole at all initial hearings and almost all subsequent hearings fails to give effect to the statutory minimum terms despite Penal Code §3041 language that parole shall normally be granted at the initial hearing. The Board promulgated regulations pursuant to Penal Code §3041(a) which include standardized gravity matrices, but routinely denies parole for the same circumstances and factors specifying appropriate terms. (See Cal. Code Regs., tit. 15, §2400 et seq., footnotes citing implementation authority.)

Although it is presumed that the Board performs its duties lawfully, it is hardly debatable that the Board does not "normally" set parole release dates, as a matter of policy. And when it does, in about 2% of cases, the Governor reverses most of those, like here, as a matter of policy, where there is no substantial evidence to support the decision. See, for example, In re Capistran, (2003) 107 Cal.App.4th 1297, In re Mark Smith, (2003) 109 Cal.App.4th 489; In re Ernest Smith, (2003) 114 Cal.App.4th 343, to name a few published cases. Because of the ~~minimal "evidence" required under the "some evidence" standard,~~ most of the denials and reversals of parole withstand court challenges. release on parole presumed by statutory language gives rise to a substantial right, but has been disregarded. the

great majority of indeterminately sentenced prisoners have been repeatedly denied parole, but would have been released long ago under reasonable administration of the statutes and regulations.

"The Court has an obligation, however, to look beyond the facial validity of a statute that is subject to possible unconstitutional administration since a 'law though 'fair on its face and impartial in appearance' may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings." Minnesota v. Probate Court (1940) 309 U.S. 270, 277.

Although the most recent interpretation of the statute at issue now holds that proportionality or comparison of like offenses is not required, i.e., In re Dannenberg (2005) 34 Cal.4th 1061, the Ninth Circuit has previously stated:

"While the interpretation gloss on the statute may bind this court as a matter of statutory construction, we are not, however, similarly bound as to the constitutional effect of the construction." McSherry, 880 F.2d at 1053" (Aponte v. Gomez, 993 F.2d 705 (9th Cir. 1993) (emphasis added)

This most recent interpretation of the statutes is

inconsistent with decisions and history leading up to the changes in the parole statutes, which prior decisions recognized, as previously discussed:

"In contrast, by altering the statutory scheme and enacting the DSL, the Legislature recited specifically that it "finds and declares that the purpose of imprisonment for crime is punishment." (Pen. Code §1170, subd. (a)(1); all subsequent statutory references are to this code.) The new law provides that an inmate's "release date shall be set in manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the judicial council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and so doing shall consider the number of victims of the crime for which the prisoner is sentenced and other factors in mitigation and aggravation of the crime." (§3041, subd. (a), italics added.) The present parole guidelines were promulgated pursuant to the new act. Thus, the guidelines are not mere administrative responses to the Board's internal shifting discretion but rather reflect basic legislative alterations in the underlying parole scheme. (In re Stanworth (1982) 33 Cal.3d 176, 182.) (Underlining emphasis added.)

Clearly, the interpretation of the law shortly after it was changed was that the Board's discretion was limited by the legislative alterations and guidelines. The changes were clearly intended to place limits on the Board's discretion:

"That, the Montana statute places significant limits on the Board's discretion is further demonstrated by its replacement of an earlier statute which allowed absolute discretion ..."Board of Pardons v. Allen, 482 U.S. 369.

Like with the Montana statute, in California the former Penal Code §3041 was completely changed, mandating the establishment of criteria for the normal setting of parole dates. Furthermore, Penal code §3041(b) clearly spells out why the board may require an extended period of incarceration. Because the Governor is bound by the same standards as the Board, the same would apply to the Governor. The current interpretive gloss on the parole and related statutes reverts plain statutory intent to the previous parole scheme by judicial omission of part of the whole, and violates principles of statutory construction, offending due process and ex post facto law.

THE "SOME EVIDENCE" STANDARD MUST "TEND LOGICALLY", AND BY "REASONABLE INFERENCE" TO ESTABLISH A FACT RELEVANT TO PETITIONER'S SUITABILITY FOR PAROLE.

Petitioner, denies the "some evidence" standard used by the Board satisfied the requirements under both state and federal due process. To satisfy the "some evidence" standard of Judicial Review of the Board's ultimate decision, only a "modicum of evidence is required". *Rosenkrantz*, 29 Cal.4th at 677; *Hill*, supra, 427 U.S. at 456. However, the "some evidence" standard applies to evidentiary sufficiency and is not a substitute for other due process requirements, *Edward v. Balisok*, (1977) 520 U.S. 641, 648, such as the Board's own preponderance of material and relevant evidence. (See Cal.Code of Regulations, tit 15, section 2000 (50)(63)(91). Thus, to determine whether the Board has fulfilled it's minimal due process procedural requirements, a reviewing Court looks not first at the decision, but the process in which it arrived at that decision. *Balisok*, supra, Ibid.

Here the Board continues to interpret the "some evidence" standard illegally. The Board's decision in this case failed to point to evidence demonstrating that Petitioner currently presents an unreasonable risk of danger to society - the ultimate question in determining Petitioner's suitability for parole (CCR, Tit. 15, §2403, subd. (a) For this reason, the evidence underlying the Board's decision does not tend logically and by reasonable inference, to establish a fact relevant to the inmate's suitability for parole. (*Morrall*, supra, 102 Cal.App.4th

at pp. 298-299). The discretion of the Board to determine parole suitability, although broad, is not absolute, and the Board's decisions must be supported by "some evidence" (*In re Powell*, (1988) 45 Cal.3d 894, 902-904; see also *Terbune v. Superior Court* (1998) 65 Cal.App.4th 864, 872-873; *In re Minnis* (1972) 7 Cal.3d 639, 646-647).

The United States Supreme Court has made it clear that the "some evidence" standard discussed in *Superintendent v. Hill* (1985) 472 U.S. 445, is only one aspect of judicial review for compliance with minimum standards of due process. The California Legislature has given the Board guidelines to follow in evaluating a parolee's eligibility for parole, mandating that the Board "shall normally" set a parole release date... "in a manner that will provide "uniform terms" for offenses of similar gravity and magnitude in respect to their threat to the public"... (*Id.*, quoting Penal Code §3041, subd. (a).) The Board is required to "establish criteria for the setting of parole release dates." (*Ibid.*) However, the Board lacks discretion to promulgate regulations that are inconsistent with governing statutes, and the judicial branch has the final word on questions of legal interpretation." (*Id.*, citing *Terbune v. Superior Court*, *supra*, 65 Cal.App.4th 864, 873)(emphasis added).

Petitioner asserts that the "some evidence" standard is being applied arbitrarily by the reviewing Court's in the State of California. The Courts of California, both State and Federal, seem to have settled in for the "some evidence" standard of Judicial Review. (See, e.g., *McQuillion v Duncan*, 306 F.3d 895 (9th cir. 2002), and in *In re Rosenkrantz*, 29 Cal.4th 616 (2002).

without taking into consideration the "substantial evidence" standard which is required by reviewing courts **Consolidated Edison Co. vs NLRB**, 305 U.S. 197 (1939) (See Page 9)

The "some evidence" standard derives from the United States Supreme Court decision in **Superintendent v. Hill**, 472 U.S. 445; 105 S.Ct. 276 (1985), and is expressly a standard of "Judicial Review" for reviewing Court's, not the Board's Standard

The first California decision applying the "some evidence" standard of **Hill** was in the case of **In re Powell**, 45 Cal.3d 894 (1988). The **Powell** case was one where the Board of Prison Terms rescinded a parole grant based on a psychological report. In his petition, **Powell** argued for the "independent judgment" standard to the facts before the Board, or alternatively, the "substantial evidence" test. The People argued for the deferential "some evidence" test. **Powell** argued for the independent judgment test analogizing habeas corpus proceedings to administrative mandamus proceedings under California Code of Civil Procedure section 1094.5. That code section provides for review of administrative orders or decisions; in some cases it applies the independent judgment test while in other circumstances the substantial evidence test. If the former, and abuse of discretion is established when the Court, exercising its independent judgment determines the administrative findings are not supported by the weight of the evidence. If the latter, the Court must accept all evidence favorable to the Respondent as true and disregard any unfavorable evidence, if the evidence so viewed is sufficient as a matter of law, the order or decision must be affirmed. In rejecting **Powell's** argument, the court held that standard only



applies when an administrative decision affects a vested right. This is a pivotal point. The Powell Court determined that "a prison inmate has no vested right in his prospective liberty on a parole release date". (id. at 903). It cited to pre-1977 cases of *In re Fain*, 65 Cal.App.3d 376 (1976), and to *In re McLain*, 5 Cal.2d 78, 87 (1960), also cited by *Fain*, *supra*. However, two critical facts were not present at the time of the decision, (1) there was no liberty interest created by pre-1977 section 3041; and (2) the California Supreme Court had not defined post-1977 section 3041, as having vested a liberty interest in a parole release date, as it did later in the *Rosenkrantz* decision 29 Cal.4th 616 (2002), following on the heels of *McQuillion v, Duncan*, 306 F.3d 895, 901-903 (9th cir. 2002), which interpreted Section 3041 as creating an "expectancy of release" that was a cognizable liberty interest protected by federal due process. Thus, the Powell Court was wrong about whether a vested right was involved, and its decision to apply the "some evidence" standard instead of the "independent judgment test" or "substantial evidence" was also wrong because it was based on an incorrect interpretation of law.

Yet, the California Supreme Court in the *Rosenkrantz* case, 29 Cal.4th 616, applied the "some evidence" standard of *Superintendent v. Hill*, 472 U.S. 445 (1985), in such language as ~~to confuse the lower Courts as to its specific purpose. i.e., the~~ standard of judicial review. It carried forward the "some evidence" standard originally applied in *In re Powell*, 45 Cal.3d 894 (1988). The *Rosenkrantz* Court did not make clear that the "some evidence" standard was not a standard applied by the board

itself as a standard of proof in its deliberations. It appears that the omission by the Rosenkrantz Court of any articulation of what the Board's standard of evidence would be as a critical component to the deliberative process of weighing and balancing of evidence, has resulted in the Board not applying their own preponderance of relevant and material evidence standard (CCR, Title 15, Div. 2, Section 2000; (50) Good Cause (63) Material Evidence (91) Relevant Evidence), thereby rendering every decision to grant or deny parole completely standardless, and thus arbitrary and capricious.

Typically in California, the judicial standard of review of the ultimate decision of the Board of Parole Hearings denying parole to a prisoner has been the "some evidence" standard. In re Dannenberg (2005) 34 Cal.4th 1061; In re Ramirez (2001) 94 Cal.App.4th 549, 564; In re Rosenkrantz, [Rosenkrantz V] (2002) 29 Cal.4th 565, 616. Although both Rosenkrantz and Dannenberg thus affirmed the importance of judicial review of the board decisions, the decision's provide less than clear guidance as to the proper application of the "some evidence" standard articulated in both decisions. Of particular concern is the Dannenberg Court's brief discussion in dicta of the "commitment offense" factor, which can improperly be read as granting to the Board the ability to deny parole on the basis of almost any fact imaginable. As a result, there is a real risk the State will interpret the standard to assert, de facto, the power it has been expressly denied; effective immunity from meaningful judicial review of parole decision. It should be recognized, however, that

several courts are struggling to determine exactly how this standard applies. While other Court's (post Dannenberg & Rosenkratz) has held that the "some evidence" standard must apply to current dangerousness. While interpreting this standard the California Court of Appeals, Second Appellate District in the case of *In re WEN LEE*, (Oct. 17, 2006, B188831)(2006 DJDAR 13961) the Court held;

...We conclude, however, that the governor erred. The test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. (Cal.Code Regs., tit. 15, §2402, subd. (a) [parole denied if prisoner "will pose an unreasonable risk of danger to society if released from prison]; see *In re Scott* (2005) 133 Cal.App.4th 573, 595 ["The commitment offense can negate suitability [for parole] only if circumstances of the crime ... rationally indicate that the offender will present an unreasonable public safety risk if released from prison"] but see *In re Lowe* (2005) 130 Cal.App.4th 1405 [suggested "some evidence" applies to the factors, not dangerousness]. Some evidence of the existence of a particular factor does not necessarily equate to some ~~evidence the parolee's release unreasonably endangers~~ public safety.

In the case of *In re Elkins*, (Oct. 31, 2006, A111925) the

Court of Appeals, First Appellate District, held that;

..."The 'some evidence' standard is extremely deferential and reasonably cannot be compared to the standard of review involved in ... considering whether substantial evidence supports the findings" , nevertheless, it requires" ' "some indicia of reliability" ' " (Scott II, supra, 133 Cal.App.4th at p. 591, quoting Biggs v. Terhune, (9th Cir. 2003) 334 F.3d 910, 915) and "may be understood as meaning that suitability determinations must have some rational basis in fact" (Scott II, at p. 590, fn. 6).

One thing is for certain, even if a mere "some evidence" standard is to apply in this review, that standard is only a vehicle for the Court's review of the Board's decision, not a standard for the Board itself to apply. The findings to support that initial decision by the Board to deny parole, however, must be that the record indicates the Petitioner, poses a "current" danger to the public. That finding can not be based on such flimsy evidence as to render it mere whim or caprice. (See In re Ramirez, supra, at 564; See also In re Powell, (1988). To the contrary, as set forth herein, the Board's decision must be made under the preponderance of evidence standard. (Cal.Code of Reg., Title 15, Div. 2, section 2000 (50) Good Cause).

Petitioner denies the "some evidence" standard used By the Board satisfied the requirements under both state and federal due

process. Petitioner asserts reliance on the Commitment offense does not satisfy the "some evidence" standard. There is no question that under *Rosenkrantz* and *Dannenberg* the statutory "commitment offense" factor is relevant, and that it may at times be enough to deny parole on its own, neither *Rosenkrantz* nor *Dannenberg* stands for the principle that the commitment offense is always enough by itself. In fact, both cases affirmatively state that reliance on the commitment offense alone might, in some circumstances, rise to the level of a due process violation. That conclusion is consistent with the concern raised by the Ninth Circuit in *Biggs v. Terbune*, that the reliance on an ever-frozen, unchanging factor - such as the commitment offense - in denying parole may in certain instances violate due process. This point was also addressed in the case of *In re Ramirez*, 94 Cal.App.4th 549, at 571 (2001), when the Court noted that reliance on the crime after 17 years in prison was arbitrary. Petitioner has been incarcerated 17 years. While the proportionality aspects of the *Ramirez* decision were disapproved by the California Supreme court decision in *In re Danneneberg*, the entirety of *Ramirez* decision, including this aspect, was not disapproved. Therefore, the Board's reliance on the commitment offense violates due process. The predictive value of the crime after 17 years of incarceration is zero. Furthermore, in the case of *In re Scott*, 34 Cal.Rptr.3d 905 (Cal.App.1 Dist. 2005), ~~the Court clearly reaffirmed the rationale of the Ramirez Court~~ when it declared "...Parole is the rule rather than the exception"... Thus, the California Board of Parole Hearings continuous use of the "some evidence" standard as their proper

standard of review is inappropriate, thus, illegal. Furthermore, reviewing Courts using the "some evidence" standard violates principles of appellate review. Substantial evidence is the standard required for a reviewing Court. *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197 (1939). It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Chrysler v. U.S. Environment Protection Agency, C.A.*, 631 F.2d 865, 890. Under a proper analysis, the "substantial evidence" test, and not a "some evidence" review is the appropriate standard.

ALL RELEVANT AND RELIABLE POST-CONVICTION EVIDENCE  
MUST BE GIVEN THE REQUIRED CONSIDERATION IN FAVOR  
OF PETITIONER IN LIGHT OF THE EVIDENCE PRESENTED

Petitioner submits that the Board bases its reasons for Petitioner's continued incarceration on historical facts that can never change, thus ignoring the uncontradicted evidence of Petitioner's rehabilitation. Petitioner has achieved the very goal that is hailed by our judicial and correctional systems, coming to prison, turning his life around and committing himself wholeheartedly to bettering himself and the world around him. Petitioner asserts there is no evidence that Petitioner is currently a threat to public safety. At Petitioner's hearing the Board denied Petitioner parole using static factors, despite overwhelming evidence showing Petitioner's rehabilitation. Petitioner asserts he has taken every available step to improve his life, pay his debt to society, and prepare himself for eventual release, as it is required under penal code §3041 for eligible prisoners serving indeterminate sentences. The Board's reliance on the Commitment Offense as satisfying the "some evidence" standard of review is without merit, after removing the facts erroneously relied upon, relied exclusively upon the Commitment Offense and failed to weigh and consider Petitioner's remorse,, positive psychological profile, lack of future dangerousness, and both realistic and positive parole plans including housing, education, and employment. The Board is required to consider all relevant information about a prisoner, not simply his commitment offense. His "risk of danger to society

is to be assessed in light of all relevant information available to the panel. (Cal. Code Regs., tit. 15, §2402(b)).

Under the view of the California parole process, it is clear that the nature of the commitment offense can constitute a basis for denial only to the extent it sheds light on whether a prisoner "now poses a risk of danger to society". Relying on the offense after years in custody and clear evidence of rehabilitation becomes arbitrary. At some point along the parole consideration process, that excuse to refuse to set a parole date enlght of exemplary conduct and behavior becomes arbitrary, and the term, although initially valid, becomes disproportionate and therefore unlawful. As time passes, and as the appropriate uniform term for the offense approaches, the offense itself sheds less and less light on how a prisoner will behave on the outside. His record in prison, his mental health, his conduct and achievements, all shed more light on his readiness to rejoin society. (see *Deluna*, supra 2005 WL 268045, 6). a defendant's postcommitment institutional behavior is relevant to his suitability for parole [citing §2402, subd. (d)(9)], and has both positive and realistic parole plans (see *In re Deluna*, supra, 2005 WL 268045, 5- Stable Relationships with others favor parole (15 CCR §2402 subd. (d)(9), All these factors favor his release. There is no evidence Petitioner now poses a risk of danger to society.

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~~The Board's reasons finding petitioner unsuitable is~~  
 unreasonable and an abuse of discretion enlght of the evidence  
 presented to the Board by petitioner and the Department of  
 Corrections and Rehabilitation Psychological Department and  
 Counselor.

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At the hearing, Correctional Counselor I, T. Verdasoto testified as to Petitioner's programming, and his future residence and employment when paroled:

Therapy and Self-Help Activities: Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir.

Postconviction Factors: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/22/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While in Calipatria, he worked in the culinary, pre-voc. and Compute Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the drycleaning, vocational electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification,

Close B was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

Disciplinary History: Plaza has remained disciplinary free throughout his incarceration

Residence: Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr., Simi Valley, California 93063. His phone number is (805) 581-6323

Employment: Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone (805) 578-7303.

Assessment: In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing. (see Exhibit "B")

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Dr. M. Macomber testified as to Petitioner's his current mental stability and his lack of present and future dangerous:

Psychiatric and Medical History: There is no

psychiatric history. There is no history of serious accidents or head injuries or seizures. His health is good.

Current Mental Status/Treatment Needs: Mr. Plaza

related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts Degree. His grades are very good. Also, he has obtained a certificate as a home inspector from professional career institute in Georgia by correspondence. In addition, he has completed several courses toward self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job

success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

Current Diagnostic Impression: Axis I- Drug and alcohol use by history; Axis II- No personality disorder; Axis III- No physical disorder; Axis IV- Life term incarceration; Axis V- Current GAF: 95.

Assessment of Dangerousness: (A) In considering potential for dangerous behavior in the institution. Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time in prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it

was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

(B) In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

(C) At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this no longer is an issue. Therefore, there are no significant risk factors in this case.

Clinician Observation/Comments/Reccomendations: There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon release. He has very strong family support in the community. All these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All these factors indicate that his prognosis for successful adjustment in the community is excellent. (see Exhibit "C")

Petitioner asserts that the rehabilitative evidence submitted by Petitioner and both the life Evaluation report and Psychological report is supportive of release contrary to the Board's specious findings. the Biggs court addressed the Boards illegal usage of needed therapy and other illegal reasons to justify a highly illegal denial.

"The record in this case and the transcripts of Biggs hearing before the Board clearly show that many conclusions and factors relied on by the Board were devoid of evidentiary basis".

Petitioner submits that the record in this case is also devoid of evidentiary basis as to the Board's findings that evidence presented is not supportive of release, which violates due process. Petitioner further submits that despite the overwhelming evidence that Petitioner does not present a current risk to public safety. The Board arbitrarily found petitioner unsuitable for release. Petitioner asserts that the real reason given by the Board indicative of unsuitability is the commitment offense, and if allowed to identify the unchanging circumstances as indicative of unsuitability, this would put Petitioner in an impossible situation, where no matter what he shows in terms of positive behavior, reformation, self-help, work skills, parole plans, ~~on just rehabilitation in general, he would never be able~~ to overcome the unchanging facts of the crime. The only logical application of constitutional due process dictates what the Court in *Irons v. Warden*, 358 F.supp.2d 936, 947, (E.D.Cal. 2005) held,

, i.e., that any denial requires the presence of some in-prison behavior showing that the inmate **currently** presents an unreasonable risk of danger if paroled.

Here the facts of the crime have been the only real reason for denying parole. yet, those facts have never been tied to **current** behavior showing that Petitioner still presents an unreasonable risk at this time. A rule requiring the presence of in-prison adverse behavior to justify a denial based on the crime simply recognizes what the 9th Circuit in Biggs alluded to when it talked of the rehabilitative goals of the system, and the need to take into consideration that a person can rehabilitate themselves. This seems to be missing from the Board's current agenda and policy. This denies to Petitioner the process to which he is constitutionally due.

At this point, Petitioner has been incarcerated over 23 years (including pre- & post-conviction credit). His programming clearly shows his full rehabilitation. In drawing the line as to when a denial becomes arbitrary, that line has definitely been crossed in this case, as the Board cannot present factual findings showing a continued risk of danger based on the rehabilitative evidence presented. To the contrary, the in-prison facts are exclusively positive.

As Ramirez noted (Ramirez, 94 Cal.App.4th at 549), the paroling authority must do more than merely commend Petitioner ~~for the hard work done to rehabilitate himself while in prison.~~ They must actually consider these factors "as... circumstance[s] tending to show his suitability for parole." Ramirez supra 94 Cal.App.4th at 571-72 [emphasis in original]. Of course, all the



Board did with petitioner's extensive accomplishments was to brush them aside with several terse lines and issue superficial compliments. Obviously, no serious consideration was ever given to Petitioner's outstanding programming. Yet, the Biggs rule is clear that if an inmate "continue[s] to demonstrate exemplary behavior and evidence of rehabilitation, denying him a parole date simply because of the nature of [his] offense and prior conduct would raise serious questions involving his liberty interest in parole". *Biggs v. Terhune*, supra, 334 F.3d at 916. Here, the evidence of actual rehabilitation is beyond dispute.

The Boards inability to find anything in his current programming, demeanor or psychological condition to justify a finding of current dangerousness, the Board continuously falls back on the immutable and unchanging facts, of the crime, to base its findings of unsuitability.

Again as noted above, wherever one draws the line as to when the reliance on the unchanging facts of the commitment offense becomes a violation of due process in the abstract, under the facts here after 17 years, it clearly has passed here. Thus, the Board must do more than simply commend Petitioner for his efforts and accomplishments, and must consider them as favoring parole in evaluating suitability. *Ramirez*, supra, at 572. The Board must do this even if the factors of the commitment offense in the abstract can be said to be sufficient to deny petitioner parole.

Petitioner asserts that he has continued to be a model inmate, yet, continues to be deprived the benefits of his exemplary rehabilitation by the California Board of Parole

Hearings. The only real issue at a parole hearing is whether the inmate currently poses an unreasonable risk of danger to the public if paroled. This must be determined by an inmates post-conviction evidence of rehabilitation. petitioner has met every prerequisites condition that warrants a finding of suitability. Because there is no evidence to support a finding that Petitioner poses a current threat to public safety of any magnitude, let alone an unreasonable level of threat, the decision denying parole can not be sustained.

#### CONCLUSION

The Parole Board's decision was arbitrary and capricious. Petitioner did not receive fair hearing from the Board of Parole Hearings, nor will he ever.

The Court must order Petitioner released or at the very least, direct the Board of Parole Hearings to issue a decision within ten days granting Petitioner parole, setting his term as prescribed by the Legislature and the Statutes.

Based on the foregoing reasons and the entire file herein, Petitioner submits that the hearing was a sham and a farce in violation of the intent of the Legislature when it enacted Penal Code §3041 et seq. 30 years ago.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this \_\_\_\_ day of \_\_\_\_\_, 2007, Correctional Training Facility, Soledad, Ca 93960-0689.

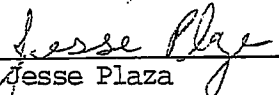
Jesse Plaza  
Jesse Plaza, Petitioner In Pro Per

PRAYER FOR RELIEF

1. Issue an Order to Show Cause on an expedited basis directing Respondent to file a Return pursuant to Rule 4.551, California Rules of Court;
2. Issue a Writ of Habeas Corpus;
3. Order Respondent to provide Petitioner with reasonable discovery;
4. Conduct an Evidentiary Hearing;
5. Declare the rights of the parties;
6. Order injunctive relief;
7. Appoint Counsel;
8. Issue an order directing Petitioner released on parole;
9. Direct Respondent to release Petitioner forthwith upon the granting of his release on parole;
10. Issue an Order directing Petitioner released on his own recognizance or on reasonable bail; and
11. Grant all other relief necessary to promote the ends of justice.

Dated: OCT. 1, 2007

Respectfully submitted

  
Jesse Plaza

In Pro per

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

California Court of Appeals

b. Result: denied c. Date of decision: unknown

d. Case number or citation of opinion, if known: unknown

e. Issues raised: (1) n/a

(2) \_\_\_\_\_

(3) \_\_\_\_\_

f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

unknown

9. Did you seek review in the California Supreme Court? ☒ Yes. ☐ No. If yes, give the following information:

a. Result: denied b. Date of decision: unknown

c. Case number or citation of opinion, if known: unknown

d. Issues raised: (1) n/a

(2) \_\_\_\_\_

(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

n/a

11. Administrative Review:

- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

As of May 1, 2004, Exhaustion of the Administrative Appeal Process has been

eliminated. Title 15 regulations governing section 2050-2056 has been repealed.

- b. Did you seek the highest level of administrative review available? ☒ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15. MC-275

13. a. (1) Name of court: SUPERIOR COURT, COUNTY OF LOS ANGELES

(2) Nature of proceeding (for example, "habeas corpus petition"): HABEAS CORPUS

(3) Issues raised: (a) ILLEGAL FINDING OF UNSUITABILITY BY THE BOARD OF PAROLE HEARINGS.

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): DENIED (ATTACHED HERETO AS EXHIBIT "D")

(5) Date of decision: SEPTEMBER 6, 2007

b. (1) Name of court: N/A

(2) Nature of proceeding: \_\_\_\_\_

(3) Issues raised: (a) \_\_\_\_\_

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

\_\_\_\_\_  
N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

\_\_\_\_\_  
NO DELAYS

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

\_\_\_\_\_

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

\_\_\_\_\_

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

\_\_\_\_\_  
THIS COURT HAS JURISDICTION

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: OCT. 1, 2007

Jesse R. Rye  
(SIGNATURE OF PETITIONER)

**PROOF OF SERVICE BY MAIL**  
**BY PERSON IN STATE CUSTODY**  
(C.C.P. §§ 1013(A), 2015,5)

I, Jesse Plaza, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

Jesse Plaza, CDCR #: H-12371  
CORRECTIONAL TRAINING FACILITY  
P.O. BOX 689, CELL #: F-338U  
SOLEDAD, CA 93960-0689.

On OCT. 1, 2007, I served the attached:

---

PETITION FOR WRIT OF HABEAS CORPUS

---

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

COURT OF APPEALS  
SECOND APPELLATE DISTRICT  
300 S. Spring Street  
Second Floor, North Tower  
Los Angeles, CA 90013-1204

OFFICE OF THE ATTORNEY GENERAL  
RONALD REAGAN BUILDING  
300 S. Spring Street  
Los Angeles, CA 90099-9126

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on OCT. 1, 2007.

Jesse Plaza  
Declarant

1 Jesse Plaza  
2 H12371 - F338U  
3 P.O. Box 689  
4 Soledad, CA. 93960

5  
6 IN THE COURT OF APPEALS  
7 SECOND APPELLATE DISTRICT

8 Jesse Plaza  
9 Petitioner,

No:  
Super. Ct: BH004502

10 vs.

11 Ben Curry, et al.,  
12 Respondent.

EXHIBITS IN SUPPORT OF PETITION  
AND MEMORANDUM OF POINTS AND  
AUTHORITIES

# EXHIBIT A



INITIAL PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life )  
Term Parole Consideration )  
Hearing of: )

CDC Number H-12371

JESUS PLAZA )  
\_\_\_\_\_)

**INMATE  
COPY**

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

MAY 1, 2006

PANEL PRESENT:

ARCHIE JOE BIGGERS, Presiding Commissioner  
ROLANDO MEJIA, Deputy Commissioner

OTHERS PRESENT:

JESUS PLAZA, Inmate  
LAWRENCE MORRISON, Deputy District Attorney  
KATERA E. RUTLEDGE, Attorney for Inmate

CORRECTIONS TO THE DECISION HAVE BEEN MADE

\_\_\_\_\_  
No      See Review of Hearing  
\_\_\_\_\_  
Yes      Transcript Memorandum

Ruby M. Dougherty, Peters Shorthand Reporting

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--oOo--

1

P R O C E E D I N G S

1

2

DEPUTY COMMISSIONER MEJIA: We're on

3

record.

4

PRESIDING COMMISSIONER BIGGERS: Okay.

5

This is initial parole consideration hearing for

6

Jesus Plaza, P-L-A-Z-A, CDC No. H-12371. We're

7

located at the Correctional Training Facility in

8

Soledad. Inmate was received on October 9, 1991

9

from Los Angeles County. The life term began on

10

October 9, 1991 and the minimum eligible parole

11

date is January 25th, 2007. The controlling

12

offense for which the inmate has been committed

13

is murder case number -- first-degree murder

14

with a weapon. Case No. is VA004108. That's a

15

violation on criminal code PC187. The inmate

16

received a term of 25 years to life, with a

17

minimum eligible parole date of 1/25/07. Now

18

this hearing's being tape-recorded and for the

19

purpose of voice-identification each of us will

20

state our first and last name, spelling our last

21

name. When we get to you Mr. Plaza, if you

22

would please give us your CDC number after you

23

spell your last name. I will start and move to

24

my left. ~~My name is Archie Joe Biggers,~~

25

B-I-G-G-E-R-S, and I'm a Commissioner.

26

DEPUTY COMMISSIONER MEJIA: Rolando

27

Mejia, M-E-J-I-A, Deputy Commissioner.

1 DEPUTY DISTRICT ATTORNEY MORRISON:

2 Lawrence Morrison, M-O-R-R-I-S-O-N, Los Angeles  
3 District Attorney.

4 ATTORNEY RUTLEDGE: Katera E. Rutledge,  
5 R-U-T-L-E-D-G-E, attorney for Mr. Plaza.

6 INMATE PLAZA: My name is Jesus Plaza,  
7 last -- CDC number is H-12371.

8 [Recording equipment malfunction, placement of  
9 equipment, background noise, and volume of  
10 participants resulted in indiscernible content.]

11 PRESIDING COMMISSIONER BIGGERS: Okay.  
12 Thanks to all of you. Mr. Perez is there an ADA  
13 statement that was passed over there to you? Do  
14 you see that? It should have been right next  
15 to--

16 INMATE PLAZA: (Indiscernible).

17 PRESIDING COMMISSIONER BIGGERS: -- would  
18 you please read that out loud for us?

19 INMATE PLAZA: "The Americans with  
20 Disability Act, ADA, is a law to  
21 help people with disabilities.  
22 Disabilities are problems that  
23 make it harder for some people to  
24 ~~see, hear, breathe, talk, walk,~~  
25 learn, think, work, or take care  
26 of themselves than it is for  
27 others. Nobody can be kept out of

1 public places or activities  
2 because of a disability. If you  
3 have a disability you have the  
4 right to ask for help to get ready  
5 for your BPT hearing, get to the  
6 hearing, talk, read forms and  
7 papers, and understand the hearing  
8 process. BPT will look at what  
9 you ask for to make sure that you  
10 have a disability that is covered  
11 by the ADA, and that you have  
12 asked for the right kind of help.  
13 If you do not get help or if you  
14 don't think you got the kind of  
15 help you need, ask for a BPT 1074  
16 Grievance Form. You can also get  
17 help to fill it out."

18 PRESIDING COMMISSIONER BIGGERS: All  
19 right. Do you understand what that means Mr.  
20 Plaza?

21 INMATE PLAZA: Yes, I do.

22 PRESIDING COMMISSIONER BIGGERS: And what  
23 does it mean in your own words please.

24 ~~INMATE PLAZA: In my own words I believe~~  
25 it's saying if I have any disability or need  
26 help during this hearing I have the right to  
27 have those provided for me.

1 PRESIDING COMMISSIONER BIGGERS:

2 (Indiscernible) we're talking about things like  
3 hearing, eye -- do you wear glasses?

4 INMATE PLAZA: No.

5 PRESIDING COMMISSIONER BIGGERS: Okay.

6 Do you have any hearing impairment?

7 INMATE PLAZA: No, I don't.

8 PRESIDING COMMISSIONER BIGGERS: And you  
9 can walk without any problems?

10 INMATE PLAZA: Yes.

11 PRESIDING COMMISSIONER BIGGERS: Okay.

12 Have you ever been included in the Triple CMS or  
13 EOP Program?

14 INMATE PLAZA: Never.

15 PRESIDING COMMISSIONER BIGGERS: Okay.

16 So you don't suffer from any disability that  
17 would prevent you from participating in today's  
18 hearing?

19 INMATE PLAZA: Not at all.

20 PRESIDING COMMISSIONER BIGGERS: Counsel,  
21 do you feel that your client's ADA rights have  
22 been met? Ms. Rutledge?

23 ATTORNEY RUTLEDGE: Yes, Sir.

24 ~~PRESIDING COMMISSIONER BIGGERS: Thank~~

25 you. This hearing is being conducted pursuant  
26 to Penal Code Section 3041 and 3042 and the  
27 rules and regulations of the Board of Prison

1 Terms governing parole consideration hearings  
2 for life inmates. The purpose of today's  
3 hearing is to consider the number and the nature  
4 of the crimes you were committed for, your prior  
5 criminal and social history, your behavior and  
6 programming since your commitment. We have had  
7 the opportunity to review your Central File, and  
8 you will be given the opportunity to correct or  
9 clarify the record. We will reach a decision  
10 today, and find -- and inform you whether or not  
11 we find you suitable for parole and the reasons  
12 for our decision. If you are found suitable for  
13 parole, the length of your confinement will be  
14 explained to you. Before we go any further, I  
15 want to advise you that we expect you to be  
16 fully honest with us today, especially with this  
17 being your initial hearing. So in the event  
18 that you don't get a date today, this here will  
19 form the foundation for all future hearings.

20 INMATE PLAZA: I (indiscernible).

21 PRESIDING COMMISSIONER BIGGERS: Any  
22 false statement you make today could have an  
23 adverse effect on your ability to get a date at  
24 a later time in the event that you don't get a  
25 date today. Nothing that happens here today  
26 will change the findings of the Court. We are  
27 not here to retry your case. We are here to

1 determine if you are suitable for parole. Do  
2 you understand that?

3 INMATE PLAZA: I understand.

4 PRESIDING COMMISSIONER BIGGERS: The  
5 hearing will be conducted in two phases. I will  
6 discuss with you the crime you were committed  
7 for, your prior criminal and social history.  
8 Deputy Commissioner Mejia will talk to your  
9 about parole plans, letters of support and  
10 opposition, your counselor's report and your  
11 psychological evaluation. Once that is  
12 concluded, both Commissioners, the District  
13 Attorney, and your attorney will ask you  
14 questions. Questions from the District Attorney  
15 shall be asked through the Panel and your  
16 answers should be directed to the Panel. Before  
17 we recess for deliberation, the District  
18 Attorney, your attorney, and you will be given  
19 the opportunity to make a final statement  
20 regarding your suitability, followed by  
21 statements -- if we had victims, it would be --  
22 (indiscernible) follow with the victims, but  
23 since we don't have any we don't worry about  
~~24 that one. California Code of Regulations states~~  
25 that regardless of time served a life inmate  
26 shall be found unsuitable for and denied parole  
27 if in the judgment of the Panel the inmate would



1 pose an unreasonable risk of danger to society  
2 if released from prison. You have certain  
3 rights. Those rights include the right to a  
4 timely notice of this hearing, the right to  
5 review your Central File. Did you review your  
6 Central File?

7 INMATE PLAZA: Yes.

8 PRESIDING COMMISSIONER BIGGERS: And the  
9 right to present relevant documents. Ms.  
10 Rutledge, do you believe that your client's  
11 rights have been met.

12 ATTORNEY RUTLEDGE: Yes.

13 PRESIDING COMMISSIONER BIGGERS: Okay.  
14 Thank you, ma'am. You have an additional right  
15 to be heard by an impartial Panel. Do you have  
16 any objection to the Panel members?

17 INMATE PLAZA: No, none at all.

18 PRESIDING COMMISSIONER BIGGERS: Okay.  
19 All right. I'm going to ask Ms. Rutledge, do  
20 you have any objections to the Panel  
21 (indiscernible)?

22 ATTORNEY RUTLEDGE: No, Sir.

23 PRESIDING COMMISSIONER BIGGERS: Thank  
24 you. You will receive a written copy of our  
25 tentative decision today. That decision becomes  
26 effective within 120 days. A copy of the  
27 decision and a copy of the transcript will be

1 sent to you, and you will have 90 days from that  
2 date to appeal if you so desire. Now, I need to  
3 let you know that the Board has eliminated its  
4 appeals process. If you disagree with anything  
5 that happens in today's hearing, you have the  
6 right to go directly to the Court with your  
7 complaint.

8 INMATE PLAZA: I understand.

9 PRESIDING COMMISSIONER BIGGERS: Okay,  
10 thank you. You are not required to admit your  
11 offense or discuss your offense. However, this  
12 Panel does accept the findings of the Court to  
13 be true. Do you understand that?

14 INMATE PLAZA: Yes, I (indiscernible).

15 PRESIDING COMMISSIONER BIGGERS: Okay,  
16 thank you. I'm gonna pass a -- over to your  
17 attorney and then to the District Attorney what  
18 I've have marked as Exhibit One so that we can  
19 make sure that we're all using -- on the same  
20 set of documents.

21 DEPUTY DISTRICT ATTORNEY MORRISON:

22 District Attorney has all the documents, thank  
23 you.

24 ATTORNEY RUTLEDGE: The -- Mr. Plaza, the  
25 defense has all (indiscernible).

26 PRESIDING COMMISSIONER BIGGERS: Thank  
27 you, ma'am. Thank you, sir. Commissioner

1 Mejia, is there any confidential material in the  
2 file?

3 DEPUTY COMMISSIONER MEJIA: No. No  
4 confidential information.

5 PRESIDING COMMISSIONER BIGGERS: Okay.  
6 Are any additional documents to be submitted?

7 ATTORNEY RUTLEDGE: I (indiscernible) we  
8 did submit --

9 PRESIDING COMMISSIONER BIGGERS: And I  
10 read those (indiscernible) read the statement  
11 into the record, because I want to make sure it  
12 he gets into the record. I read, I think it was  
13 the last two pages that had to do with matrix  
14 and all the other stuff in there -- but I -- and  
15 I -- but want to get it on record, so -- to  
16 make sure that it is in the transcript.

17 ATTORNEY RUTLEDGE: Do you want me to  
18 read it or him to do that?

19 PRESIDING COMMISSIONER BIGGERS: It  
20 doesn't matter, which ever you prefer.

21 ATTORNEY RUTLEDGE: This was taken from  
22 -- Mr. Plaza had submitted to the Board a  
23 memorandum of evidence and law in support of  
24 ~~parole suitability and this is directed to the~~  
25 Board.

26 "Introduction, the California Code  
27 of Regulations Title XV Division

1 Two hereafter XV Section 2245,  
2 states in part, 'The prisoner is  
3 responsible for bringing to the  
4 attention of the hearing Panel any  
5 issues pertaining to his rights  
6 under this article or any failure  
7 to comply with these rules. A  
8 prison may waive any of these  
9 rights. Any such waiver shall be  
10 documented.' I wish to bring to  
11 the attention of this Panel at  
12 this time that I do have the right  
13 to present this document at this  
14 hearing to have it entered into  
15 the record. Moreover, the Panel  
16 must --"  
17 That's moot since the Panel's accepting it. Is  
18 that correct?

19 DEPUTY COMMISSIONER MEJIA: Yes, it is.

20 ATTORNEY RUTLEDGE: Okay. In the third  
21 paragraph, my client submits this memorandum  
22 because he does not wish to intentionally or  
23 unintentionally waive any of his rights under  
24 ~~the law, and that he wants that all evidence in~~  
25 support of finding suitability be stated for the  
26 records and for purposes of appeal if necessary.

27 PRESIDING COMMISSIONER BIGGERS: Before

11

1 you go any further. Normally, everything that  
2 we do, that's why it's on record. So, I just  
3 want to make sure that you now understand that  
4 we -- our job is to make sure that we do  
5 everything under due process and we are aware of  
6 everything that happens in Title XV.

7 INMATE PLAZA: That's right.

8 PRESIDING COMMISSIONER BIGGERS: Okay?

9 So, go ahead, ma'am, please.

10 ATTORNEY RUTLEDGE: Moving on to the  
11 memorandum incorporates the following -- relies  
12 upon the Court rulings.

13 "InRe Rosencrance,  
14 (indiscernible); InRe Rosencrance  
15 for LA County Superior Court, Case  
16 No. AH10298; InRe Caswald,  
17 210DJDJR10845; InRe McWillion,  
18 U.S. Court of Appeals for the 9th  
19 Circuit, Case No. 0055182; InRe  
20 Ramirez, 9th Circuit Court of  
21 Appeals, Case No. A0092699; InRe  
22 Biggs, U. S. Court of Appeals,  
23 Case No. VH002016; InRe Deluna,  
24 ~~126 Appellate Court, 585; InRe~~

25 Low, 130 Appellate Court, 1418 --"

26 PRESIDING COMMISSIONER BIGGERS: Excuse  
27 me, what was that? What was the -- what's the

12

1 relation of the Low case in this hearing?

2 ATTORNEY RUTLEDGE: How are we applying  
3 the Low case to this hearing? This is being  
4 presented by my client; I have not read the Low  
5 case.

6 DEPUTY DISTRICT ATTORNEY MORRISON: Well,  
7 I have a -- I have a question (indiscernible) if  
8 I may. The inmate can present anything he  
9 wants, but this sounds like legal arguments.  
10 The inmate has an attorney -- he's gonna have an  
11 attorney -- he can make whatever arguments he  
12 wants if he gonna represent himself then he can  
13 make legal arguments. But he doesn't get to  
14 make legal arguments and have an attorney.

15 ATTORNEY RUTLEDGE: Yes, he does.  
16 There's nothing -- sometimes he can have an  
17 attorney --

18 PRESIDING COMMISSIONER BIGGERS: Excuse  
19 me. What I'm doing right now is allowing him to  
20 read his document into the file. When we start  
21 talking about the opposing statements and  
22 getting into all the others, then that's when I  
23 will put a stop to that. But I want to get this  
24 in the file, and I have something to say once

25 you finish.

26 ATTORNEY RUTLEDGE: And I would -- I  
27 would remind the Panel that under Title XV the

1 people have no standing to object to anything  
2 that the inmate does.

3 PRESIDING COMMISSIONER BIGGERS: Exactly.

4 ATTORNEY RUTLEDGE: Thank you. All  
5 right. So -- "InRe Shapudis, 135 Appellate  
6 Forth 217 at 227; Irons versus Carey 408 F  
7 Third, 1165 9th Circuit." Now Page Two goes to  
8 the commitment offense so --

9 PRESIDING COMMISSIONER BIGGERS: You can  
10 skip that one. In fact, I think you can skip  
11 the last three pages, I just wanted to get those  
12 things on the record for you (indiscernible)  
13 others because what I wanted to let you know sir  
14 is that those cases are a matter of law, and you  
15 can use those any times when you appeal if for  
16 some reason you don't get a date. But there are  
17 a couple that you forgot to mention. One of  
18 those is Dannenberg, and we'll talk about that a  
19 little later on. I would appreciate -- I think  
20 you've done a superb job of putting this package  
21 together. My only comment on that is I think  
22 sometimes that you don't who -- by going in  
23 there and doing certain things, there's a  
24 difference between shall, will, and can't.

25 INMATE PLAZA: I understand.

26 PRESIDING COMMISSIONER BIGGERS: Okay.

27 So. All right.

1           ATTORNEY RUTLEDGE: Can I -- there's an  
2 -- I still have to lodge a couple of objections  
3 whenever the Panels --

4           PRESIDING COMMISSIONER BIGGERS: No  
5 problem. So those are the additional documents.  
6 Now, you say you have some preliminary  
7 objections? What are they now?

8           ATTORNEY RUTLEDGE: Well, our first  
9 objection would be -- well, we would ask that  
10 the Panel -- under 2236 my client will be  
11 discussing everything but the commitment offense  
12 with the Panel. We ask that the people not be  
13 allowed to refer to him not discussing the case,  
14 and that again we're just reiterating that the  
15 people don't have standing to object to any of  
16 our statements and may not advise the Panel on  
17 the law, and that would be all aside from what  
18 would be in the package.

19           DEPUTY DISTRICT ATTORNEY MORRISON:  
20 (Indiscernible) recommend that (indiscernible)  
21 represents the citizen of Los Angeles, it's part  
22 of public comment that we're entitled to make on  
23 any subject regarding suitability for parole.

24           ATTORNEY RUTLEDGE: You can during your  
25 closing. Other than that you have no standing.

26           PRESIDING COMMISSIONER BIGGERS: She's  
27 right about that. You do have the right to do



1 that in Closing Statements (indiscernible). He  
2 can in fact though ask questions. If your  
3 client elects not to answer them that's  
4 something entirely different, but he does have  
5 the right to ask questions as well.

6 ATTORNEY RUTLEDGE: Of my client,  
7 correct. Yes. Okay.

8 PRESIDING COMMISSIONER BIGGERS: Are  
9 there any other preliminary objections?

10 ATTORNEY RUTLEDGE: No, Sir.

11 PRESIDING COMMISSIONER BIGGERS: Okay. I  
12 assume from what you just told me that the  
13 inmate will be speaking to us about everything  
14 but the crime?

15 ATTORNEY RUTLEDGE: Yes.

16 PRESIDING COMMISSIONER BIGGERS: Okay.  
17 Would you raise your right hand please, Mr.  
18 Plaza. Do you solemnly swear or affirm that the  
19 testimony you give at this hearing will be the  
20 truth and nothing but the truth?

21 INMATE PLAZA: I do.

22 PRESIDING COMMISSIONER BIGGERS: Thank  
23 you. I'm gonna read into the record from the  
24 Appellate decision the facts of the committing  
25 offense.

26 "On May 26, 1990, Mr. Plaza was an  
27 active member of the King Cobra

16

1 juvenile gang. (Indiscernible)

2 Silva, S-I-L-V-A, Mr. Plaza's

3 co-arrestee was also an active

4 member of the King Cobras.

5 Patrick Littlebull,

6 L-I-T-T-L-E-B-U-L-L, the victim,

7 was a member of the Bell Garden

8 (phonetic) --" is that local --

9 INMATE PLAZA: It's always been

10 miss-spelled, but it's supposed to be locos as

11 in crazy.

12 PRESIDING COMMISSIONER BIGGERS: Locos.

13 INMATE PLAZA: Locos.

14 PRESIDING COMMISSIONER BIGGERS: Locos.

15 INMATE PLAZA: Yeah.

16 PRESIDING COMMISSIONER BIGGERS: Okay.

17 "-- a rival juvenile gang. Fifty-nine hundred

18 block of Loveless (phonetic) Street was a known

19 hangout of the Bell Garden Locos."

20 INMATE PLAZA: There you go.

21 PRESIDING COMMISSIONER BIGGERS: "On May

22 26, 1990 at around 10:00 p.m.

23 Rosario Quevedo, Q-U-E-V-E-D-O,

24 and her sister, Martha -- and I'll

25 spell the last name --

26 P-A-L-A-C-I-O-S, returned from

27 church with their children and

1 parked their car in front of their  
2 apartment at 5940 Loveless Street.  
3 Quevedo, Q-U-E-V-E-D-O, noticed  
4 some individuals standing and  
5 talking to each other on the  
6 sidewalk in front of the car.. She  
7 also saw a car approaching from  
8 the opposite direction with its  
9 lights off and stop across the  
10 street. Rosario and Palatono --  
11 P-A-L-A-C-I-O-S -- then heard  
12 gunshots. Quevedo panicked and  
13 drove away. When they returned a  
14 short time later, they saw the  
15 victim lying face down in the  
16 street in front of the apartment  
17 building. Jesus Zamora,  
18 Z-A-M-O-R-A, made a pizza delivery  
19 for Dominoes Pizza about 10:00  
20 p.m. that evening at 5918 Loveless  
21 Street. After delivering the  
22 pizza he pulled into the driveway  
23 at 5918 Loveless Street to write  
24 in his delivery book. As he was  
25 writing, he heard the sound of  
26 gunfire and the sound of a car.  
27 coming rapidly in his direction.

1 He saw a car traveling on Loveless  
2 Street without the headlights on.  
3 The car passed Zamora and turned  
4 the car, straddling the curve.  
5 The lights of the car then came  
6 on, and Zamora saw the number 33  
7 on the license plate. He also  
8 noted that the car was a gray  
9 Caprice. He later related his  
10 observations to Bell Garden Police  
11 Officer Reuben Musquiz,  
12 M-U-S-Q-U-I-Z. Officer Musquiz  
13 then broadcast a description of  
14 the gray Caprice over the police  
15 radio. Around 10:50 p.m., Bell  
16 Police Officer Baley Hooper,  
17 H-O-O-P-E-R, observed a silver  
18 Caprice with 33 on it as the last  
19 two numbers on the license plate."  
20 And then I'm going to skip down and say -- well,  
21 let me read this in too.  
22 "-- proceeded westbound on  
23 Florence Avenue near the 710  
24 Freeway bridge. He radioed for  
25 assistance and followed the car  
26 into a driveway. Plaza, who was  
27 driving, and passenger Danny Silva

19

1 exit the vehicle. They were  
2 detained and subsequently  
3 arrested. Brown paper bags were  
4 placed on the hands of Plaza and  
5 Silva so they -- that they -- be  
6 tested for gunshot residue.  
7 Analysis residue from a pellet in  
8 Silva's hand indicate that Plaza  
9 and Silva had either shot a gun,  
10 handled a gun, or had been within  
11 with two (indiscernible) feet of a  
12 gun as it was fired."  
13 Okay. That's enough for the record. And since  
14 you're not gonna be talking about the crime  
15 itself -- and counsel if I touch on an area that  
16 you want to object to, that's fine, I need to  
17 ask a couple of things though. At one time you  
18 denied your involvement.

19 INMATE PLAZA: Yes.

20 PRESIDING COMMISSIONER BIGGERS: Okay.

21 When did you change that?

22 INMATE PLAZA: I'd have to say about an  
23 hour into the interrogation.

24 PRESIDING COMMISSIONER BIGGERS: An hour  
25 into the interrogation?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: Well, I

1 was looking at the Appellate Decision and it  
2 indicated -- I thought it looked like it was a  
3 little bit longer than that.

4 ATTORNEY RUTLEDGE: He maintains he was  
5 the driver of the vehicle, and they never --  
6 there were two people. Both people found in the  
7 car had gunshot residue. There was a third  
8 person that was never tried.

9 PRESIDING COMMISSIONER BIGGERS: Never  
10 tried, but yeah there were two. The two that  
11 had the residue was Mr. Plaza and Mr. Silva; is  
12 that correct?

13 INMATE PLAZA: That's correct.

14 PRESIDING COMMISSIONER BIGGERS: Okay.  
15 Can you tell me how you got the residue on your  
16 hands?

17 INMATE PLAZA: Yes, I handled the gun  
18 after it was fired plus I was in the vicinity of  
19 the shots being fired.

20 PRESIDING COMMISSIONER BIGGERS: Within  
21 two to four feet is what you're saying?

22 INMATE PLAZA: Yes, Sir.

23 ATTORNEY RUTLEDGE: Okay, I think we're  
24 getting into the commitment offense --

25 PRESIDING COMMISSIONER BIGGERS: Okay.  
26 At one time you talked about the (indiscernible)  
27 you requested it be turned to a manslaughter

1 (indiscernible), right?

2 INMATE PLAZA: My lawyer did, yes.

3 PRESIDING COMMISSIONER BIGGERS: Yes.

4 And that was shot down by the Appellate  
5 Decision. Are you still a member of that King  
6 Cobra gang?

7 INMATE PLAZA: I was never technically a  
8 member, but I was an associate. I hung around  
9 with gang members, to be totally honest. I hung  
10 around with several different gang members.  
11 People that I hung around with were from  
12 different gangs.

13 ATTORNEY RUTLEDGE: (Indiscernible).

14 INMATE PLAZA: Oh, being born and raised  
15 in East LA there's gangs all around.

16 PRESIDING COMMISSIONER BIGGERS: Yeah,  
17 there are -- some gangs are not as violent as  
18 others. There are some gangs that are just  
19 locals that hang out, too.

20 INMATE PLAZA: Not that I know of.

21 PRESIDING COMMISSIONER BIGGERS: Okay.  
22 Well, I'm familiar with LA. Not all of them are  
23 Bloods, Crips, or whatever names that they have.  
24 You indicated that you have spent a lot of time  
25 hanging around those people. Were you aware  
26 that -- well, that's getting back into the  
27 crime. Were you aware that -- the night in

22

1 question, were you in with some of those known  
2 gang members?

3 INMATE PLAZA: Yes.

4 PRESIDING COMMISSIONER BIGGERS: Did you  
5 have any idea what was going to take place?

6 ATTORNEY RUTLEDGE: We would -- that  
7 would -- sorry, I have to object to --

8 PRESIDING COMMISSIONER BIGGERS: All  
9 right.

10 ATTORNEY RUTLEDGE: But we would accept  
11 the --

12 PRESIDING COMMISSIONER BIGGERS: Findings  
13 of the

14 ATTORNEY RUTLEDGE: -- Appellate --

15 PRESIDING COMMISSIONER BIGGERS:  
16 Appellate Decision. Okay.

17 ATTORNEY RUTLEDGE: Yes.

18 PRESIDING COMMISSIONER BIGGERS: All  
19 right. Then I will go and just look and see  
20 what else I think is -- talking about your  
21 priors.

22 DEPUTY DISTRICT ATTORNEY MORRISON:

23 Excuse me, Commissioner. I'm sorry, I may have  
~~24 missed it with all of this discussion. But did~~  
25 the Chair read the official version of the crime  
26 into the --

27 PRESIDING COMMISSIONER BIGGERS: I read



23

1 it from the Appellate Decision. Yes, it is.

2 DEPUTY DISTRICT ATTORNEY MORRISON:

3 Because the Appellate Decision is pretty  
4 lengthy.

5 PRESIDING COMMISSIONER BIGGERS: Yeah,  
6 and I read that in --

7 DEPUTY DISTRICT ATTORNEY MORRISON:

8 That's right. Okay.

9 ATTORNEY RUTLEDGE: It's probably why you  
10 fell asleep during that part.

11 PRESIDING COMMISSIONER BIGGERS: All  
12 right -- we're not going to have that now.

13 ATTORNEY RUTLEDGE: Just teasing.

14 PRESIDING COMMISSIONER BIGGERS: I know.  
15 We're going to keep everything on the up and up  
16 here. Okay. And did you have a juvenile  
17 history, because when I went through this I  
18 couldn't find anything. It says not available  
19 to Probation Department as far as five years  
20 after that. Did you have any juvenile history?

21 INMATE PLAZA: (Indiscernible).

22 PRESIDING COMMISSIONER BIGGERS: And the  
23 only adult history that you had was -- you were  
24 ~~given 24 months probation for some vandalism~~

25 INMATE PLAZA: Yes.

26 PRESIDING COMMISSIONER BIGGERS: What was  
27 that about?

1 INMATE PLAZA: I was arrested for  
2 vandalizing a store -- store property.

3 PRESIDING COMMISSIONER BIGGERS: Why did  
4 you do that?

5 INMATE PLAZA: To be honest with you, I  
6 was walking down the street, I was intoxicated,  
7 I seen the can sitting on the floor, I picked it  
8 up, what made we think I wanted to know what  
9 color it was I really am not sure today while I  
10 did that, but I did spray a one-inch diameter  
11 dot on the wall to see what color the can was  
12 and that's what I was arrested for -- a one-inch  
13 diameter dot on the wall.

14 PRESIDING COMMISSIONER BIGGERS: And they  
15 gave you two-years probation for that?

16 INMATE PLAZA: Yes.

17 ATTORNEY RUTLEDGE: It's usually three  
18 years under the Penal Code.

19 PRESIDING COMMISSIONER BIGGERS: Yeah,  
20 but that -- there had to be some extenuating  
21 circumstances as to priors --

22 DEPUTY DISTRICT ATTORNEY MORRISON:  
23 Misdemeanor probation in LA County summary  
24 ~~probation is frequently two years. Sometimes~~  
25 for a (indiscernible) it's only one year.

26 ATTORNEY RUTLEDGE: But under the Penal  
27 Code you don't have to justify three years. You

1 just give three years.

2 PRESIDING COMMISSIONER BIGGERS: Okay,  
3 well, my question to you -- was there anything  
4 else that led them to give you only two years?

5 INMATE PLAZA: I wouldn't know.

6 PRESIDING COMMISSIONER BIGGERS: Okay.  
7 Let's talk a little bit about your drug -- do  
8 you have -- do you have a drug history?

9 INMATE PLAZA: Yes, I do.

10 PRESIDING COMMISSIONER BIGGERS: Okay.  
11 And what was your drug of choice?

12 INMATE PLAZA: Cocaine.

13 PRESIDING COMMISSIONER BIGGERS: Cocaine.

14 And it says that you began snorting cocaine  
15 three times a week at the age of 16 --

16 INMATE PLAZA: Yes.

17 PRESIDING COMMISSIONER BIGGERS: -- and  
18 you continued use of this of -- until age 18,  
19 and you stopped at age 20.

20 INMATE PLAZA: Actually that's incorrect.  
21 I never actually stopped. I just decreased for  
22 a minute, and then I just elevated up until the  
23 time I was arrested.

24 PRESIDING COMMISSIONER BIGGERS: Were you  
25 -- the night you were arrested were you involved  
26 in alcohol or cocaine or anything?

27 INMATE PLAZA: Both. Alcohol and

1 cocaine.

2 PRESIDING COMMISSIONER BIGGERS: When did  
3 you start using alcohol?

4 INMATE PLAZA: I'd say age 15.

5 PRESIDING COMMISSIONER BIGGERS: You were  
6 still living at home, were you not?

7 INMATE PLAZA: Yes, I was.

8 PRESIDING COMMISSIONER BIGGERS: Were  
9 your parents aware that you were using cocaine  
10 and getting involved in drinking?

11 INMATE PLAZA: No, not at all?

12 PRESIDING COMMISSIONER BIGGERS: How  
13 could you hide that?

14 INMATE PLAZA: Well, my father'd been  
15 gone since I was about four years old so he's  
16 not in the picture. My mother, due to trying to  
17 support me and my other siblings -- she worked  
18 -- usually she had -- numerous times she usually  
19 had two jobs at a time. She's work day and  
20 night, so by the time she'd get home I'd already  
21 be home in bed.

22 PRESIDING COMMISSIONER BIGGERS: Okay.  
23 Did you -- I'll get in your social here  
24 (indiscernible) in a few minutes. But I wanted

---

25 to find out were you -- let me go back. You  
26 were talking about the cocaine usage. You  
27 started using it at an early age right?

---

27

1 INMATE PLAZA: Yes.

2 PRESIDING COMMISSIONER BIGGERS: How did  
3 you support yourself in getting that?

4 INMATE PLAZA: I had a job. I used to  
5 work after school through the Cedar Program.

6 PRESIDING COMMISSIONER BIGGERS: Cocaine  
7 is a fairly expensive drug, isn't it?

8 INMATE PLAZA: Yes, it is.

9 PRESIDING COMMISSIONER BIGGERS: Okay.  
10 Were you buying it on the street?

11 INMATE PLAZA: Yes, I was.

12 PRESIDING COMMISSIONER BIGGERS: Costing  
13 you a pretty penny to do that, wasn't it?

14 INMATE PLAZA: Yeah, pretty much all my  
15 money.

16 PRESIDING COMMISSIONER BIGGERS: Okay,  
17 and you still say that your parents did not know  
18 that you were doing this?

19 INMATE PLAZA: No, they didn't.

20 PRESIDING COMMISSIONER BIGGERS: How  
21 about alcohol? What was your drink of alcohol  
22 that you liked?

23 INMATE PLAZA: Mainly my drink was  
24 Miller.

25 PRESIDING COMMISSIONER BIGGERS: Miller?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: And you

1 would take that in conjunction with?

2 INMATE PLAZA: Well, the alcohol started  
3 off as a, you know, what they call a gateway  
4 drug. It was the beginning of alcohol which led  
5 me to the cocaine and that was pretty much the  
6 two main -- my two main choices of alcohol and  
7 drug of choice was cocaine.

8 PRESIDING COMMISSIONER BIGGERS: Okay.  
9 Under Social Factors, you were born on February  
10 the 7, 1965 to Caroline and Jessie (phonetic)  
11 Plaza.

12 INMATE PLAZA: I believe there's an  
13 addendum behind that -- there's a --

14 PRESIDING COMMISSIONER BIGGERS: Yeah,  
15 that said he was born on 3/7/65.

16 INMATE PLAZA: That's correct, yes.

17 PRESIDING COMMISSIONER BIGGERS: Then you  
18 got -- the marriage took place on 5/12/84.  
19 That's your marriage, right?

20 INMATE PLAZA: Yes.

21 PRESIDING COMMISSIONER BIGGERS: Getting  
22 back to your -- you've got four brothers -- four  
23 sisters and a brother?

24 INMATE PLAZA: Yes.

25 PRESIDING COMMISSIONER BIGGERS: Okay.  
26 Are they still -- are all of them still living?

27 INMATE PLAZA: Yes, the are.

29

1           PRESIDING COMMISSIONER BIGGERS: Is any  
2 of them incarcerated?

3           INMATE PLAZA: No. And also if I might  
4 add, two of -- the two youngest sisters are  
5 actually half-sisters. They're from my dad's  
6 second marriage.

7           PRESIDING COMMISSIONER BIGGERS: Okay.  
8 And your wife's name is --

9           INMATE PLAZA: Guadalupe.

10          PRESIDING COMMISSIONER BIGGERS:  
11 Guadalupe Falcon (phonetic)?

12          INMATE PLAZA: Yes.

13          PRESIDING COMMISSIONER BIGGERS: And you  
14 married on 5/7/84, and you have three children.

15          INMATE PLAZA: That should be 5/12.

16          PRESIDING COMMISSIONER BIGGERS: You have  
17 12 children?

18          INMATE PLAZA: No, no, I'm saying the  
19 date. It should be 5/12; you said 5/7.

20          PRESIDING COMMISSIONER BIGGERS: Five  
21 seven, and it should be 5/12.

22          INMATE PLAZA: It should be 5/12/84.

23          PRESIDING COMMISSIONER BIGGERS: Okay.

24 We'll make sure that that gets in to your  
25 official record regardless of what happens here.

26          INMATE PLAZA: What was the question --  
27 I'm sorry --

1           PRESIDING COMMISSIONER BIGGERS: Do you  
2 have three kids? Three kids?

3           INMATE PLAZA: Yes, three children.

4           PRESIDING COMMISSIONER BIGGERS: And, in  
5 going through your file I saw that there was a  
6 letter from your wife and I'm sure that  
7 Commissioner Mejia will get in to. Any problems  
8 with the marriage?

9           INMATE PLAZA: I'd be lying if I said no.  
10 Sure, we have problems. But I mean nothing that  
11 we haven't gotten through.

12          PRESIDING COMMISSIONER BIGGERS: Well,  
13 I'm talking about because of incarceration  
14 (indiscernible).

15          INMATE PLAZA: Oh, yeah, well sure, you  
16 know. It's been hard on her being the single  
17 mother herself now. It was hard on me not being  
18 there able to support her. When I first left, I  
19 was the main source of, you know, support for  
20 the house so when I first go incarcerated she  
21 pretty much had to take everything on and do  
22 everything on her own, you know, and she kind  
23 of, you know, she felt abandoned, you know, and  
~~24 she had every right to feel that way because she~~  
25 had to just take over the whole household.

26          PRESIDING COMMISSIONER BIGGERS: Did you  
27 think about that when you were associating with



1 these known gang members? That that possibility  
2 -- that that could happen?

3 INMATE PLAZA: At the time, no, because  
4 my -- my thought -- my thought process wasn't on  
5 responsibility. To me responsibility was, I had  
6 a job, I paid the bills, I put food on the  
7 table, there was a roof over their heads, they  
8 had clothes on their backs. I thought that was  
9 responsibility. I didn't realize that it was a  
10 lot more to responsibility than that.

11 PRESIDING COMMISSIONER BIGGERS: But you  
12 were still -- you still had your drug habit and  
13 everything else --

14 INMATE PLAZA: And work. Yeah, I, you  
15 know, I functioned, you know, to the -- to  
16 everyone else I seemed to function in a normal,  
17 you know, capacity, but of course it was, you  
18 know, things behind the scenes that nobody knew  
19 about.

20 PRESIDING COMMISSIONER BIGGERS: Okay.  
21 Commissioner, do you have any questions on this  
22 subject?

23 DEPUTY COMMISSIONER MEJIA: Yeah, maybe  
24 about the remorse (indiscernible).

25 PRESIDING COMMISSIONER BIGGERS: Go  
26 ahead.

27 DEPUTY COMMISSIONER MEJIA: How do you

1 feel about the man who was killed?

2 INMATE PLAZA: I'm -- in the case of the  
3 victim, I take full responsibly for the taking  
4 of his life. I can understand remorse. I've  
5 dealt with, you know, people dying around me in  
6 the past. It's not something that I'm new to.  
7 I understand that it not only affected him but  
8 it affected his family. It affected friends of  
9 his, society. I understand that technically we  
10 all -- we all have times in our lives when we  
11 wish we could turn back the clock but that's not  
12 possible. But I do take full responsibility for  
13 my actions.

14 DEPUTY COMMISSIONER MEJIA: How do you  
15 feel about the death of the victim; that's what  
16 I asked you.

17 INMATE PLAZA: The death of the victim?

18 DEPUTY COMMISSIONER MEJIA: Yeah, the  
19 human being that was killed. How do you feel  
20 about him being shot and being killed? I know  
21 all the peripheral that you said -- I  
22 (indiscernible) I want (indiscernible) how do  
23 you feel about him?

24 INMATE PLAZA: I'm very remorseful for  
25 the victim, for taking his life. He -- I'm very  
26 sorry that it happened. It was something that  
27 should not have happened. He didn't deserve

1 that, and I just can't -- I mean, there are no  
2 words that'll make it better or make it go away.

3 DEPUTY COMMISSIONER MEJIA:

4 (Indiscernible) that's it. I really don't have  
5 any questions.

6 PRESIDING COMMISSIONER BIGGERS: Okay.  
7 Then I'll ask you to go into the Post Conviction  
8 Factors, please.

9 DEPUTY COMMISSIONER MEJIA: Okay. This  
10 is your initial parole consideration hearing Mr.  
11 Plaza, and your custody history is that you were  
12 initially accepted to the Wasco State Prison RC  
13 in 1991. You were transferred to California  
14 State Prison Folsom new facility in 1991,  
15 December. You were at Wasco in October, then  
16 December in 1991 you went to the Old Folsom  
17 (indiscernible). Then 2/21/1992, you went to  
18 CSP Calipatria, North and East. February of  
19 1994 you went to Lancaster, then 12/16/1997  
20 Avenal State Prison. And you went  
21 (indiscernible) in 1998 of March, CTF. You had  
22 a brief period of time in CMF for medical issues  
23 --

24 INMATE PLAZA: Correct.

25 DEPUTY COMMISSIONER MEJIA: And  
26 (indiscernible) you have several jobs, and the  
27 most recent job is the (indiscernible) Porter?

34

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: And you have  
3 an associate (indiscernible). During your  
4 incarceration you went to education  
5 (indiscernible) electronics -- vocational  
6 Electronics, Air Conditioning Refrigeration, Dry  
7 Cleaning, Plumbing. You were a Porter and also  
8 a Teacher's Aide, Infirmary Dental Assistant.  
9 And, you have a high school diploma that 1983.  
10 You have a 12.0 TABE score. (Indiscernible) you  
11 have completed 32 units out of the Coastline  
12 Community College?

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And, you -- I  
15 see that you have really attempted to get some  
16 trades -- completion of vocational trades. You  
17 have completed, I think, 19 certification units  
18 when it comes to Air Conditioning and  
19 Refrigeration?

20 INMATE PLAZA: I've completed the whole  
21 course.

22 DEPUTY COMMISSIONER MEJIA: You completed  
23 that whole course?

24 INMATE PLAZA: Yes.

25 DEPUTY COMMISSIONER MEJIA: That's a  
26 problem. I couldn't find a completion. I saw  
27 the Certificate of Completion for the -- each

35

1 unit that's a component to the Refrigeration.

2 So you do have it there?

3 INMATE PLAZA: I believe --

4 DEPUTY COMMISSIONER MEJIA: That would be  
5 good for the record, because I -- I saw the  
6 certifications units been completed  
7 (indiscernible) and how about the Data  
8 Processing? I saw that you have completed 22  
9 such units also?

10 INMATE PLAZA: Yeah, that was not a total  
11 completion --

12 DEPUTY COMMISSIONER MEJIA: So,  
13 Vocational Air Conditioning and Refrigeration --  
14 you completed this?

15 INMATE PLAZA: Yes.

16 DEPUTY COMMISSIONER MEJIA: Okay. That  
17 is the documentation.

18 ATTORNEY RUTLEDGE: (Indiscernible).

19 DEPUTY COMMISSIONER MEJIA: You know,  
20 well you said that you completed two trades but  
21 I can't find them in the file.

22 INMATE PLAZA: Yes, I understand the last

23 -- '95. On one of my doc hearings -- I think

24 it's right here (indiscernible). At one of my

25 doc hearings, the Commissioner went through my

26 paperwork and verified finding the --

27 DEPUTY COMMISSIONER MEJIA: Do you have a

# **EXHIBIT C**

## **Part 2 of 2**

1 copy of that --

2 INMATE PLAZA: -- chrono and the  
3 certificate, but it is no longer in the file.  
4 No, I do not have a copy. It's no longer in the  
5 file, but the Commissioner did see it at one  
6 point in time.

7 DEPUTY COMMISSIONER MEJIA: I saw that,  
8 yeah. The doc -- was that Patterson --  
9 Commissioner Patterson?

10 ATTORNEY RUTLEDGE: It looks -- Robert  
11 Patterson, yeah. It looks to be his signature.

12 DEPUTY DISTRICT ATTORNEY MORRISON: This  
13 (indiscernible) is that a progress hearing or  
14 something?

15 PRESIDING COMMISSIONER BIGGERS: No --  
16 Documentation Hearing. Before they go through  
17 initial they give them (indiscernible).

18 DEPUTY COMMISSIONER MEJIA: I don't see  
19 any in here. I've checked. No, I know you  
20 counted -- I counted 19 units. I'm just  
21 surprised that you have all these documents; you  
22 don't have the -- I'm not saying that you're not  
23 telling the truth, but you're so organized about  
~~24 everything else. But the most important is what~~  
25 you have completed. All the cert units are  
26 there -- are there, and I know what you learned,  
27 but the completion certificate is the most

37

1 important because that will count as a --

2 INMATE PLAZA: I understand.

3 DEPUTY COMMISSIONER MEJIA: -- check

4 completed. And, I cannot depend on what the

5 Deputy Commissioner saw. Maybe he had the

6 mistake of easing certification of it or

7 completion of it. I look at your file, and it's

8 like I said, you've got everything else but I

9 can't see the completion. Even on the other,

10 you know your education progress reports.

11 Nothing says (indiscernible) that you completed,

12 but I'm giving you credit for 19 certification

13 units of Air Conditioning and Refrigeration.

14 You also took some vocational Dry Cleaning,

15 which you haven't completed --

16 INMATE PLAZA: It's also a completion.

17 DEPUTY COMMISSIONER MEJIA: Oh, yeah?

18 What year did you complete that?

19 INMATE PLAZA: I believe it's -- it's on

20 that same page or the one before.

21 DEPUTY COMMISSIONER MEJIA: I guess, I

22 think you should just bring me the completion

23 chrono.

24 ~~INMATE PLAZA: I don't have them~~

25 ATTORNEY RUTLEDGE: Four ten '95 is what

26 he has noted here, 4/10/95.

27 INMATE PLAZA: The last time I went



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1 through the Board that -- when Patterson went  
2 through the doc hearing -- when I went through  
3 the doc hearing with Patterson -- '95. I had  
4 the paperwork with me. When I hit Avenal I lost  
5 half of my property and since then I have not  
6 had --

7 DEPUTY COMMISSIONER MEJIA:  
8 (Indiscernible). contact the vocational --  
9 education where you took it -- the prison where  
10 you took it, and ask for a copy of the  
11 completion chrono or something to prove that you  
12 have completed it. That's something you can do.

13 ATTORNEY RUTLEDGE: It says the  
14 Refrigeration would have been 10/1/91, so that  
15 was --

16 PRESIDING COMMISSIONER BIGGERS: Excuse  
17 me, Commissioner Mejia. When you went through  
18 your C-file, did you not notice that those  
19 things were not there?

20 INMATE PLAZA: I did, but when I had seen  
21 that paperwork from the Chairman the --  
22 Commissioner, from the doc hearing, I thought it  
23 was going to be enough since he seen it and  
24 noted it on his record.

25 PRESIDING COMMISSIONER BIGGERS: Yeah,  
26 but (indiscernible) entirely different Panel we  
27 have to go by the documentation --

1 INMATE PLAZA: I understand.

2 PRESIDING COMMISSIONER BIGGERS: So,  
3 whenever you review whatever make sure that you  
4 have those papers.

5 DEPUTY COMMISSIONER MEJIA: Did you  
6 complete your Vocational Plumbing?

7 INMATE PLAZA: No, I was never in  
8 plumbing. I don't know where plumbing came  
9 from.

10 DEPUTY COMMISSIONER MEJIA: Well I have  
11 your diploma that -- Mr. Plaza has been unable  
12 to complete any certification units in  
13 vocational plumbing due to his being house in  
14 Level IV. Student left in the plumbing class  
15 long enough to be fully evaluated.

16 PRESIDING COMMISSIONER BIGGERS: What  
17 prison was that in?

18 DEPUTY COMMISSIONER MEJIA: ASP Avenal --  
19 Avenal State Prison.

20 INMATE PLAZA: I was in Wasco for, I  
21 think, three months and two weeks. But I was  
22 never in plumbing that I can remember. Soon as  
23 I got there they came out with the new law of  
~~24 the Close Custody not being, you know, not~~  
25 being able to be in that facility they  
26 transferred me over here.

27 DEPUTY COMMISSIONER MEJIA: Well, we'll

40

1 just leave it that you're claiming that you have  
2 completed Air Conditioning and Refrigeration; is  
3 that correct?

4 INMATE PLAZA: Dry Cleaning, Air  
5 Conditioning and Refrigeration.

6 DEPUTY COMMISSIONER MEJIA: Dry Cleaning  
7 you have completed?

8 INMATE PLAZA: Yes.

9 DEPUTY COMMISSIONER MEJIA: What year was  
10 the dry cleaning, again?

11 INMATE PLAZA: I believe it was '94 --

12 ATTORNEY RUTLEDGE: The Dry cleaning was  
13 -- I have completed 4/10/95, the Dry Cleaning  
14 and then the Air Conditioning, 10/1/99. What  
15 was the other one?

16 DEPUTY COMMISSIONER MEJIA: Most recent  
17 (indiscernible) Home Inspection.

18 INMATE PLAZA: I got that.

19 DEPUTY COMMISSIONER MEJIA: Okay. So,  
20 you're saying that you completed Air  
21 Conditioning and Vocational Dry Cleaning?

22 INMATE PLAZA: Yes.

23 DEPUTY COMMISSIONER MEJIA: And Air  
24 Conditioning Refrigeration? Anything else?

25 INMATE PLAZA: The Home Inspection, and  
26 the --

27 DEPUTY COMMISSIONER MEJIA: I'll go

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1 through that. But the actual vocational trade  
2 (indiscernible) because I know you took Data  
3 Processing, you did --

4 INMATE PLAZA: No, no --

5 DEPUTY COMMISSIONER MEJIA: -- assembly  
6 --

7 INMATE PLAZA: Yeah, I was not in the  
8 class --

9 DEPUTY COMMISSIONER MEJIA: Well, these  
10 are the two major ones that you're saying that  
11 you completed. Dry Cleaning, and Air  
12 Conditioning and Refrigeration.

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And then you  
15 did have -- completed the International  
16 (indiscernible) institute course, 8/23/1994.

17 INMATE PLAZA: That's Dry Cleaning.

18 DEPUTY COMMISSIONER MEJIA: That's  
19 connected to Dry Cleaning?

20 INMATE PLAZA: Yes.

21 DEPUTY COMMISSIONER MEJIA: Then you have  
22 -- you been in AA since 1994?

23 INMATE PLAZA: Ninety-three, '93, yeah  
24 ~~somewhere around there. I don't remember the~~  
25 exact date.

26 DEPUTY COMMISSIONER MEJIA: But the  
27 chrono I saw was for '94.

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1 INMATE PLAZA: Ninety-four.

2 DEPUTY COMMISSIONER MEJIA: Okay, that's  
3 fine. And you're still going --

4 INMATE PLAZA: Yes.

5 DEPUTY COMMISSIONER MEJIA: -- according  
6 to these last chronos, 4/1/2006. Going to the  
7 (indiscernible) Labauche Literacy Program, peer  
8 education program, Christian Fellowship, courses  
9 in Anger Management 2005, CLN courses, you've  
10 been (indiscernible) also Christian basic  
11 classes, you been involved in Teddy Bear  
12 (indiscernible) Teddy Bear Drive, Softball -- I  
13 see all this stuff in there. But I'm concerned  
14 about the major ones; AA, NA, Anger Management,  
15 (indiscernible) Impact is good. Impact  
16 programming -- you did some peer education  
17 program (indiscernible) sexually transmitted  
18 diseases, Hepatitis. You did some Bible --  
19 seven-week Bible Study series Christian Living.  
20 Let's see. Anything else you want to add?

21 ATTORNEY RUTLEDGE: Can I ask you,  
22 Commissioner, would you -- do you have the  
23 completion of AA since '94 or we don't?

24 DEPUTY COMMISSIONER MEJIA: I have the  
25 chronos since 1994. What's the first one --

26 ATTORNEY RUTLEDGE: Okay, I just wanted  
27 to make sure we didn't need to verify --

1 DEPUTY COMMISSIONER MEJIA: Oh, no, it's  
2 good --

3 ATTORNEY RUTLEDGE: Thank you.

4 DEPUTY COMMISSIONER MEJIA: -- 1994,  
5 group therapy in 1994 is the first documentation  
6 of him going to AA. He did make (indiscernible)  
7 time positively. He did some softball. You  
8 been going to softball, playing games and you're  
9 part of the team and like I said -- anything  
10 else? Those are the major ones that I have.  
11 I've (indiscernible) that you have completed.  
12 No 115s and no 128(a)s. According to the 812  
13 you do have affiliation or membership in  
14 Southside King Cobra. I have no other -- other  
15 than the 812 that the counselor completes every  
16 year when you go to classification I have no  
17 other information about him being involved in  
18 any gang<sup>\*</sup>(indiscernible) in prison. And, now  
19 we're going to go through your psych reports.  
20 Of course, there's two. Since this is your  
21 initial, we're gonna do -- I'm gonna read both  
22 the -- this was done -- the first one was done  
23 in July 21st, 1994, in Lancaster, by Dr. Isaac  
~~24 (indiscernible), and the diagnosis Diagnostic~~  
25 Impression at that time is Axis I, Poly  
26 Substance Abuse; Axis II, Combat Disorder, group  
27 kind; Axis III, to be evaluated by physicians;

1 Axis IV, Psycho Social Stressors, from mild to  
2 moderate incarceration; Axis V, Global  
3 Assessment of Functioning of 70, sentence and  
4 incarceration; and according to the doctor that  
5 their recommendation is -- he said at that  
6 present time,

7 "In 1994 it was difficult to  
8 assess the psychopathology that's  
9 related to the crime. The inmate  
10 does not reveal many details due  
11 to the appeal process. However it  
12 seems that he was involved in  
13 behavior (indiscernible) by lack  
14 of regard for others, drugs and  
15 alcohol abuse. The inmate has  
16 improved while incarcerated. He  
17 made a statement 'I grew up. I'm  
18 mature.' Quote unquote. It's  
19 also an observation of his  
20 examiner. The inmate was able to  
21 express himself in a manner that  
22 indicated (indiscernible)  
23 increased maturity. Living in a  
24 controlled setting it is too early  
25 to make any assessment. However  
26 his record indicates that he is  
27 able to follow rules and

1 regulations and is also doing

2 above average programming.

3 (Indiscernible) recommended that

4 --"

5 [Thereupon the tape was turned over.]

6 DEPUTY COMMISSIONER MEJIA: --

7 psychological report on Mr. Plaza. "It is

8 recommended for him to continue his work

9 involving trade and other meaningful

10 activities." Then we have the most current,

11 which is -- which is dated April 15th, 2006, by

12 Dr. Macomber, M-A-C-O-M-B-E-R, and the

13 Diagnostic Impression is Axis I, Drug and

14 Alcohol Abuse by history; Axis II, no

15 personality disorder; Axis III, no physical

16 disorder; Axis IV, Life Term Incarceration, GAF

17 of 95. This --

18 "He does speak in excellent

19 English as well as Spanish.

20 Affect was appropriate. There was

21 no evidence of anxiety or

22 depression. Eye contact was good.

23 His memory was intact

24 ~~(indiscernible) was intact. His~~

25 insight and self-awareness were

26 good. Assessment of

27 Dangerousness. In the potential



1           -- the prisoner's potential for  
2           dangerous behavior in the  
3           institution. Mr. Plaza has  
4           remained entirely  
5           disciplinary-free. This is  
6           commendable."

7   And the Causative Factors,

8           "He said that he has disassociated  
9           himself from the activity of  
10          Hispanic (indiscernible). No  
11          evidence that he had ever been  
12          involved in riots, possession of  
13          weapons, assaults and other --  
14          threats of any kind. At this time  
15          in this prison we have been --  
16          there has been frequent riots, and  
17          it is very difficult for a  
18          Hispanic male to disassociate  
19          himself from this activity which  
20          can spontaneously occur in front  
21          of him and if he doesn't get  
22          involved he will receive  
23          retaliation. In this case  
24          ~~remaining disciplinary-free is a~~  
25          very difficult and commendable  
26          achievement. But because of his  
27          being disciplinary-free

1 (indiscernible) finds him  
2 definitely below average in  
3 comparison to other inmates.  
4 (Indiscernible) considering his  
5 dangerous behavior in the  
6 community -- potential for  
7 dangerous behavior in the  
8 community, Mr. Plaza has no prior  
9 arrest for violence before the  
10 commitment offense. He did  
11 receive an arrest as an adult  
12 making a (indiscernible) spraying  
13 a one-inch diameter dot on the  
14 wall. He remains  
15 disciplinary-free in the  
16 instituting. In order to examine  
17 this prisoner's level on parole,  
18 the level of (indiscernible) was  
19 administered and it's indicated  
20 the 12 measures that assess  
21 criminal history, substance abuse  
22 history, current adjustment, and  
23 other factors to determine risk  
~~24 level this measure he obtained~~  
25 a score of 3.6 (indiscernible)  
26 frequencies for prison for prison  
27 inmates. This means that if 100

1 men were released on parole, he  
2 would be (indiscernible) better on  
3 parole than 96 of them. This is a  
4 very low risk level; as a result  
5 he poses no more threat to society  
6 than the average citizen in the  
7 community, and probably less  
8 threat to society at this point in  
9 his life. At the time of his  
10 offense, drugs and alcohol were a  
11 problem. However, at this point  
12 in his life it is no longer an  
13 issue therefore there are no  
14 significant risk factors for this  
15 case."

16 Any addition to my presentation, counsel, that I  
17 missed -- you want to --

18 ATTORNEY RUTLEDGE: Did you mention how  
19 he's helped other -- he's been like a mediator  
20 for other gangs?

21 PRESIDING COMMISSIONER BIGGERS: Yeah, he  
22 mentioned that.

23 ATTORNEY RUTLEDGE: Okay (indiscernible).  
24 ~~That covers everything that we had including~~  
25 ~~what we submitted.~~

26 PRESIDING COMMISSIONER BIGGERS: Okay,  
27 we're going to parole plans. Residence plans;

1 you're living with your brother Hector Plaza.  
2 Hector's residence is 353 Carla Drive, Simi  
3 Valley, California, 93063, and it's got a phone  
4 number here. Employment; Plaza plans on working  
5 Italia International, 4175 Dragon Street, Simi  
6 Valley California. I saw the letter of -- that  
7 documents that. Also your brother's letter.  
8 Assessment in re of Plaza's parole plans. "This  
9 counselor does not foresee any problems.  
10 However, it's recommended that Plaza updates his  
11 parole letters prior to this hearing." I have  
12 -- this letter's here (indiscernible) Dale Air  
13 International from Nick Gillichbauer,  
14 G-I-L-L-I-C-H-B- as in Boy A-U-E-R. It's  
15 indicated that he's the General Manager of the  
16 organization and he's willing to give him  
17 employment in the company and he will make \$9.00  
18 per hour as an assembler, working in assembly  
19 with the basic hours of 7 o'clock to 3:30 p.m.  
20 He will have (indiscernible) basic benefits of  
21 medical and dental. And there -- some of your  
22 support letters now. Jessica Plaza, dated  
23 February 20, 2006, a support letter indicating  
24 ~~that -- lots of support from all the family and~~  
25 we need to (indiscernible) his mind and heart  
26 set to accomplish all the right things and not  
27 wrong things, for taking time to read this

50

1 letter of support. She (indiscernible) says  
2 that she will -- Isabelle Plaza. Your sister  
3 also wrote a letter February 5, 2006. It  
4 doesn't say that you can -- yeah, it's  
5 supporting your release, but -- so Jessie --  
6 Jesus Plaza is some brother that you're going to  
7 be staying with --

8 INMATE PLAZA: No -- my dad is Jesus.

9 DEPUTY COMMISSIONER MEJIA: Your dad --  
10 your dad is Jesus Plaza? There's another  
11 letter, February 5, 2006. It says that you're  
12 ready to go back to society. There is Hector  
13 Plaza, November 12, 2005. He should be granted  
14 parole. He said that you should be granted  
15 parole and of course you have become a positive  
16 role model for everyone. He said that you will  
17 always have a home here with his wife and  
18 children, and I also plan on supporting him  
19 financially with whatever it takes to help you  
20 get on your feet.

21 INMATE PLAZA: Correct.

22 DEPUTY COMMISSIONER MEJIA:  
23 (Indiscernible) Ministry (indiscernible) these  
24 are your aunts and uncles --

25 INMATE PLAZA: Yes.

26 DEPUTY COMMISSIONER MEJIA: Yolanda Plaza  
27 and Arto (Phonetic) Plaza. He's a Pastor in a

1 church?

2 INMATE PLAZA: Yes, he is.

3 DEPUTY COMMISSIONER MEJIA: They will  
4 provide you counseling, and will be able to  
5 provide you mentors and he's also owner of a  
6 construction business and would be services --  
7 if he needs employment -- if you need employment  
8 he will be able to give you employment.

9 INMATE PLAZA: He's also offering me to  
10 stay in his home. He gave me -- it's actually  
11 in this other packet -- has his phone number,  
12 cell number, anything you might need to ask him  
13 any further questions.

14 DEPUTY COMMISSIONER MEJIA: Helen Plaza  
15 is your mother?

16 INMATE PLAZA: Yes.

17 DEPUTY COMMISSIONER MEJIA: And I have a  
18 support letter here, asking that you should be  
19 -- asking for your release. She also said that  
20 you'll have a house to come home -- when you  
21 come home. Rachel Plaza, I think is your  
22 sister?

23 INMATE PLAZA: Yes, correct.

24 ~~DEPUTY COMMISSIONER MEJIA:~~

25 (Indiscernible) you have her total support,  
26 either financially -- financial support.  
27 Christina Plaza, this is your daughter.

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Asking that  
3 -- how old is she?

4 INMATE PLAZA: She is 19.

5 DEPUTY COMMISSIONER MEJIA: Oh. You have  
6 -- she indicates that you have supported her by  
7 teaching (indiscernible) classes. Thinks you  
8 should be -- she's going to college. She's  
9 looking for work to help (indiscernible) you,  
10 any way possible. And we have Guadalupe Plaza,  
11 your wife?

12 INMATE PLAZA: Yes.

13 DEPUTY COMMISSIONER MEJIA: Another  
14 support letter. She says I will support him in  
15 ever way that he needed for him to meet his  
16 parole conditions. Isaiah Plaza, your son?

17 INMATE PLAZA: Yes.

18 DEPUTY COMMISSIONER MEJIA: He -- how old  
19 is he?

20 INMATE PLAZA: He's ten.

21 DEPUTY COMMISSIONER MEJIA: Ten. And  
22 there's another one, Ramona Plaza, your -- your  
23 daughter, too?

24 ~~INMATE PLAZA: That's correct.~~

25 DEPUTY COMMISSIONER MEJIA: Letter of  
26 support. Annette Gizmalla (phonetic). That's  
27 your sister?

53

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Another  
3 letter of support. She says she owns her own  
4 and will provide a place for you to live, help  
5 you financially and help you enter your programs  
6 with counseling to help you deal with everyday  
7 life's events for as long as it takes. And  
8 Alicia Desente Islanded (phonetic), who is this?  
9 Oh, this is -- this looks like it's a different  
10 one. Who's Juan Jose (indiscernible)?

11 INMATE PLAZA: Excuse me.

12 ATTORNEY RUTLEDGE: One from Mexico?

13 DEPUTY COMMISSIONER MEJIA: You have -- I  
14 couldn't read this. 9805 Jessie Plaza, okay,  
15 H12371 that's you. And, for M. Espinoza -- this  
16 is a friend?

17 INMATE PLAZA: Yes, it is.

18 DEPUTY COMMISSIONER MEJIA: Okay. It's  
19 another letter of support. And, Chaplain  
20 (indiscernible) Lindsey -- this is the Chaplain  
21 here in the prison --

22 INMATE PLAZA: Yes, it is.

23 DEPUTY COMMISSIONER MEJIA: Okay. Letter  
24 of support and he said that you have been an  
25 outstanding gentleman since his observation of  
26 you since 1998. He was appointed Music Deacon  
27 in 2003. You a musician? You play music?



1 INMATE PLAZA: No. No. I just direct  
2 the choir.

3 DEPUTY COMMISSIONER MEJIA: Oh. He said  
4 that you have -- he has seen phenomenal changes  
5 in your life during these years and he's a  
6 wonderful role model, conscious of people's  
7 needs, feelings and (indiscernible). He's truly  
8 an asset to our religious program here at CTF.  
9 And he highly recommends consideration of the  
10 Board of Prison Terms and this gentleman has --  
11 he feels that you will be an outstanding asset  
12 in the community. Nabia Anegias (phonetic),  
13 cousin?

14 INMATE PLAZA: Say the name again?

15 ATTORNEY RUTLEDGE: Yeah, it's his  
16 cousin, Nadia Anegus (phonetic).

17 DEPUTY COMMISSIONER MEJIA: Nadia Anegus,  
18 another support letter.

19 ATTORNEY RUTLEDGE: Oh, well, you know  
20 what -- it's from the Juan (indiscernible)  
21 files. Poor Juan Reeves, (indiscernible) find  
22 these letters.

23 DEPUTY COMMISSIONER MEJIA: Okay, Jessie  
24 Plaza and that this is from an (indiscernible)  
25 from Glenbrook, Philadelphia?

26 INMATE PLAZA: Yes. That's actually --  
27 that's my sister --

1 DEPUTY COMMISSIONER MEJIA: Your sister?

2 INMATE PLAZA: Yes. She married -- her  
3 name changed to Guerum (phonetic) but --

4 DEPUTY COMMISSIONER MEJIA: She said that  
5 she will continue to support you after release  
6 until you get back on your feet. She also  
7 offers her home.

8 INMATE PLAZA: Yeah.

9 DEPUTY COMMISSIONER MEJIA: Guadalupe  
10 Plaza, that's your wife. You said 2000 -- I  
11 don't know what year was this one, but I read  
12 (indiscernible) I know she's going to support  
13 you. January 7th, 2005, Jesus Plaza -- your  
14 father. Right?

15 INMATE PLAZA: Yes, that's correct.

16 DEPUTY COMMISSIONER MEJIA: Okay. Ramona  
17 Plaza --

18 INMATE PLAZA: My daughter.

19 DEPUTY COMMISSIONER MEJIA: Your  
20 daughter. Isaiah Plaza -- I read that.

21 PRESIDING COMMISSIONER BIGGERS: Some of  
22 them are duplicates, some are from 2005 and some  
23 are 2006.

24 ~~DEPUTY COMMISSIONER MEJIA: Anything else~~  
25 (indiscernible)?

26 ATTORNEY RUTLEDGE: I think you've  
27 covered every letter and more and even those

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1 that didn't belong to us. So, thank you.

2 DEPUTY COMMISSIONER MEJIA: And let me  
3 turn this back to the Commissioner.

4 PRESIDING COMMISSIONER BIGGERS: Okay,  
5 thank you. I just have one question there. I  
6 see that you want to parole to your brother.  
7 Why aren't you paroling back to your wife?

8 INMATE PLAZA: Oh, yes, my wife moved in  
9 with her sister two years ago. Her mother'd  
10 been fighting cancer. Unfortunately her mother  
11 passed away November of last year, and currently  
12 she's still living with her sister. But upon my  
13 release, hopefully within the next, you know,  
14 within three to six months, between the both of  
15 us we'll have the money to put a first and last  
16 down payment, you know, that you need for your  
17 -- our own place so that we can live together.  
18 But currently she's with her sister.

19 PRESIDING COMMISSIONER BIGGERS: Did I  
20 miss anything -- talking about the, what little  
21 we could talk about the crime --

22 ATTORNEY RUTLEDGE: You know, I meant to  
23 point out to you -- it's up to your discretion.  
24 He did provide a version in the Board Report.

25 PRESIDING COMMISSIONER BIGGERS: Yeah, I  
26 saw that.

27 ATTORNEY RUTLEDGE: Other than that,

1 except for Closing Statement, we have nothing  
2 else to --

3 PRESIDING COMMISSIONER BIGGERS: To talk  
4 about -- okay. At this point then I'm gonna ask  
5 the District Attorney if he has any questions  
6 for the -- Mr. Plaza.

7 DEPUTY DISTRICT ATTORNEY MORRISON: Okay.  
8 Did I hear the inmate say that he accepted  
9 responsibility for the crime an hour into the  
10 law enforcement interview?

11 INMATE PLAZA: Correct.

12 PRESIDING COMMISSIONER BIGGERS: Please  
13 direct your answers to (indiscernible).

14 DEPUTY DISTRICT ATTORNEY MORRISON: Just  
15 a moment, please. So at the time of his trial,  
16 the inmate accepted full responsibility for the  
17 crime.

18 INMATE PLAZA: Correct.

19 DEPUTY DISTRICT ATTORNEY MORRISON: Thank  
20 you. I have no further questions. Oh, wait a  
21 minute. Does the inmate know what the matrix  
22 for this crime is?

23 INMATE PLAZA: I believe it's 27, 28  
24 years.

25 DEPUTY DISTRICT ATTORNEY MORRISON: Thank  
26 you. Nothing further.

27 PRESIDING COMMISSIONER BIGGERS: Okay,

1 thank you, sir. Ms. Rutledge.

2 ATTORNEY RUTLEDGE: Thank you. In  
3 looking through some of your information I came  
4 across a letter that's -- I wanted to ask you  
5 about this letter. It's addressed to all family  
6 members, loved ones, and friends of Patrick  
7 Littlebull. You made an attempt to submit an  
8 apology letter to his family or to the District  
9 Attorney?

10 INMATE PLAZA: I mailed that to the  
11 address indicated on the (indiscernible).

12 ATTORNEY RUTLEDGE: All right. And what  
13 was -- I didn't see the -- what was the address?

14 INMATE PLAZA: Is it not on the  
15 letterhead of the --

16 ATTORNEY RUTLEDGE: Oh, the  
17 Correspondence Division in Sacramento.

18 INMATE PLAZA: Yes. Sacramento, yes.

19 ATTORNEY RUTLEDGE: Okay, and that was  
20 dated June 15th, 2004. It -- I'll go ahead and  
21 leave it if the Board wishes to review it, but I  
22 think you wrote it on the prompting of Impact?

23 INMATE PLAZA: Yes, correct.

24 ATTORNEY RUTLEDGE: Anyway, I just wanted  
25 to note that this letter -- he had written a  
26 letter to the family, and what did you learn in  
27 Impact?

1           INMATE PLAZA: Do you want to be  
2 specific, or do you want me to tell you  
3 everything that I learned in Impact?

4           ATTORNEY RUTLEDGE: Well, what changed  
5 your life about Impact?

6           INMATE PLAZA: I'd have to say the thing  
7 that was a drastic blow to me more than anything  
8 was there was an individual by the name of Angie  
9 Torres, her son was killed in a drive-by here in  
10 Salinas and I had the opportunity to sit down  
11 with her and discuss with her some of the  
12 specifics of my crime and in sharing with her --  
13 she had not shared with me but I shared with  
14 her, and upon finishing my, you know, my talk  
15 with her I introduced her -- I am a facilitator  
16 of Impact -- I introduced her and I went and sat  
17 down with the audience in the pews and then she  
18 had her opportunity to get up and give a  
19 presentation, and when she gave the presentation  
20 the similarities of what happened to her son was  
21 just -- it was eerie because they were just so  
22 close, and afterwards we had the opportunity to  
23 talk and she told me, you know, that -- she  
24 said, yeah you don't know what you did when you  
25 were talking to me. She says, you know, and you  
26 didn't even know my story and the same for me.  
27 I didn't know her story, but yet I shared with

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1 her, and then upon learning her story it just --  
2 it blew me away because I just realized what it  
3 must have felt like to be on the other side.  
4 Because in Impact that's one of the things that  
5 we teach. We teach victim awareness. We teach,  
6 you know, so many people are used to being on  
7 the side of the crime -- on the side of, you  
8 know, being the wrong one, and they never know  
9 what it's like to be on the other side. Most  
10 guys come out of that program with a totally  
11 different vision of crime. A lot of them come  
12 out and they say, wow, I never knew that I had  
13 that impact on my victims. So it -- it really  
14 -- it had -- it gave me a greater view, you  
15 know. It wasn't just that focus on one person  
16 or one individual. It opened my understanding  
17 of how many -- how great an effect it had.

18 ATTORNEY RUTLEDGE: What about the people  
19 in this room? Do you think this offense affects  
20 us?

21 INMATE PLAZA: Oh, definitely,  
22 definitely. I believe it does because -- again,  
23 speaking on the ripple effect, not only did it  
24 effect him, his family, his friends or his loved  
25 ones, but it effected society and I realize that  
26 it all trickles down and what happens is taxes,  
27 money, time spent, you know, it all, you know,

1 it's a ripple effect that never reaches the  
2 banks of the water.

3 ATTORNEY RUTLEDGE: All right. And,  
4 there's a statement in the Probation Report  
5 that's pretty negative about you. I mean,  
6 you're in a car with gang-bangers and someone is  
7 shot and killed and left to die on the street.  
8 How do you go from that to the person that you  
9 are today? What happened?

10 INMATE PLAZA: I would have to say even  
11 though I chose that -- to hang around with them  
12 type of people, you know, chose to be around  
13 that lifestyle, in all honesty I never expected  
14 to end up in prison and upon --

15 ATTORNEY RUTLEDGE: (Indiscernible).

16 INMATE PLAZA: -- honestly I didn't. But  
17 upon me actually making it to prison due to bad  
18 choices, it was just a slap in the face, you  
19 know. It was just reality and when it hit me I  
20 realized that, you know, everything that I had  
21 been doing, you know, reality was what I got,  
22 you know, being in prison and it wasn't  
23 something that -- it just didn't sit right with  
24 me, and I knew that this wasn't me, you know. I  
25 didn't -- I didn't want to -- I didn't want to  
26 be in prison or be one of them persons that go  
27 in and out of prison, so it was a -- it was a,



1 you know, it was a rude awakening.

2 ATTORNEY RUTLEDGE: No further questions.

3 PRESIDING COMMISSIONER BIGGERS: Okay.

4 Thank you. At this point I'm going to ask Mr.  
5 Morrison for his closing.

6 DEPUTY DISTRICT ATTORNEY MORRISON: The  
7 District Attorney opposes parole for this  
8 outrageous heinous and premeditated, vicious  
9 gang attack. The inmate aided and abetted by  
10 driving his vehicle over to the location of the  
11 murder, parking it without its lights in what  
12 the Appellate opinion described as almost lying  
13 a wait attack. And Mr. Littlejohn (sic) a rival  
14 gang member was shot and killed. He was not the  
15 only victim. The Bell Garden's Police Report  
16 which had been submitted along with the  
17 Sheriff's Homicide Report note that the  
18 supplemental report Officer Winfrey,  
19 W-I-N-F-R-E-Y, Bell Garden PD was staffed to the  
20 home of witness Collins who found a hole in his  
21 south kitchen window and an adjacent hole in the  
22 wallboard next to the window. The officer  
23 observed a hole, approximately one inch in  
24 diameter, in the lower portion of the south  
25 kitchen window. Glass fragments were present on  
26 the interior window sill. Another little hole  
27 was present in the interior vertical portion of

1 the inside of the window frame, and the reason  
2 this is significant is because the inmate with  
3 his gang mentalities and his crime partner  
4 sprayed bullets in a residential neighborhood.  
5 One was recovered from victim Littlejohn which  
6 was matched to the murder weapon which was found  
7 secreted in the inmate's car. The witnesses  
8 which described in the reports, noted numerous  
9 shots being fired and any one of those bullets  
10 could have gone through the house like it did  
11 Mr. Collins home and killed another innocent  
12 person in their home, minding their own  
13 business. This is the kind of gang that's  
14 plagued Los Angeles and all communities around  
15 the state and country, senseless gang violence.  
16 The motive was a retaliatory shooting because  
17 the Bell Garden Locos had fired on King Cobra  
18 earlier that night. The inmate should be  
19 commended; he's programmed well. Not many  
20 people come this long without a 115. He is on  
21 the way to turn his life around, as evidenced by  
22 his programming. However, the inmate still I  
23 don't believe has come to grips with the crime  
24 because he's still not candid with the Board.

25 ATTORNEY RUTLEDGE: Objection.

26 PRESIDING COMMISSIONER BIGGERS:

27 (Indiscernible) statement. Please continue.

1           DEPUTY DISTRICT ATTORNEY MORRISON: The  
2 inmate said he took responsibility into the  
3 Sheriff's interview, and this was documented at  
4 length in the Appellate Opinion as well as the  
5 statements contained in the police report. This  
6 is in the Appellate Opinion, Page Four and Five,  
7 which has not been read into the record yet.  
8 "Deputy Sheriff Woods Danoff, D-A-N-O-F-F,  
9 interviewed appellant on May 27th, 1990."

10           ATTORNEY RUTLEDGE: We would object to  
11 the reading of the police report, just because  
12 it's submitted there's still not adequate  
13 foundation for it to be read into the record.

14           DEPUTY DISTRICT ATTORNEY MORRISON: This  
15 is the Appellate Opinion summarizing the  
16 evidence at trial.

17           ATTORNEY RUTLEDGE: I'm sorry, I thought  
18 you said a Sheriff's Report.

19           PRESIDING COMMISSIONER BIGGERS: Go  
20 (indiscernible).

21           DEPUTY DISTRICT ATTORNEY MORRISON: Page  
22 Four in the Appellate Opinion, Deputy Sheriff  
23 Woods Danoff, who is one of the two LA SD  
24 homicide investigators in the case who  
25 interviewed the inmate.

26           "He interviewed appellant inmate  
27 on May 27th, 1990. Appellant at

1 first denied any knowledge of the  
2 shooting, maintaining he had been  
3 at a party at the time of the  
4 shooting. After being informed  
5 that his car had been identified  
6 as being used in the homicide and  
7 that the gun had been recovered  
8 from the car, appellant admitted  
9 that he drove the car that was  
10 used in the shooting -- "

11 DEPUTY COMMISSIONER MEJIA: Excuse me --

12 PRESIDING COMMISSIONER BIGGERS:

13 Continue, Sir.

14 DEPUTY DISTRICT ATTORNEY MORRISON: I'll

15 repeat the last sentence, since it was --

16 "After being informed that his car  
17 had been identified as being used  
18 in the homicide and that the gun  
19 had been recovered from the car,  
20 appellant admitted that he drove  
21 the car that was used in the  
22 shooting and (indiscernible)  
23 supplied the weapon and the car.

24 Appellant claimed that the shooter  
25 was named someone -- someone named  
26 Oso, O-S-O, and that he neither  
27 slowed the car down nor stopped

1 the car and never turned off his  
2 headlights. He claimed Oso later  
3 left the car and that he later  
4 picked up Silva and was giving him  
5 a ride to Silva's sister's house  
6 when they were stopped and  
7 arrested."

8 Now, the inmate apparently is saying that's when  
9 he accepted responsibility. I asked the inmate  
10 specifically if he had accepted responsibility  
11 in the testimony at his trial, and that is not  
12 correct according to the Appellate report  
13 summary of the inmate's testimony. The inmate's  
14 testimony, under oath, at trial was a denial.  
15 The Appellate Report continues on the same page.

16 "Appellant testified he gave a  
17 ride to a man named Oso who was  
18 seeking to purchase cocaine. Oso  
19 told the appellant that he could  
20 not use his own car because it was  
21 hot. While looking for the  
22 cocaine to sell, the appellant saw  
23 seven to ten men running at his  
24 car. The appellant accelerated  
25 and hear Oso shout punks at the  
26 men. Oso then pulled out a  
27 revolver and fired. Appellant

1           drove away. Appellant did not  
2           know that Oso had a gun until he  
3           fired it. His car lights were not  
4           turned off, and he slowed down  
5           only for the purpose of finding  
6           the cocaine dealer. Oso tried to  
7           hand appellant the revolver after  
8           he fired it, but appellant pushed  
9           it away and it fell into the part  
10          of the car where the radio was  
11          missing. Appellant refused to  
12          disclose the identity of Oso  
13          saying he would be killed if he  
14          did."

15 I submit that that is not accepting  
16 responsibility for being the aider and abeter,  
17 driving a fellow gang member over to the  
18 location, parking with your lights out in what  
19 the Appellate Court labeled almost lying in  
20 wait, and allowing your crime partner to go up  
21 and shoot a rival gang member motive being gang  
22 retaliation, and as I had said spraying bullets  
23 all around. The defendant's testimony at trial  
24 was a rejection of responsibility, a denial of a  
25 commission of the crime, and is absolutely not  
26 what he told the Panel today that he accepted  
27 responsibility in the trial. He's basically

1 says, oh, I gave some dude a ride to go buy some  
2 coke and then all of a sudden he pulls out a gun  
3 and starts shooting somebody. I had no idea.  
4 That is not responsibility. The inmate was  
5 attempting to be exonerated of the crime. The  
6 Appellate Report Opinion goes into great length,  
7 and I won't read it all, but on Page Six it  
8 describes all the evidence testified by other  
9 witnesses supporting of pre-meditated murder.

10 "The appellant's driving slowly  
11 with his lights off, thus  
12 eliminating attention to his  
13 approaching car is strong evidence  
14 of prior planning. The approach  
15 without lights is factually  
16 similar to lying in wait and  
17 illustrates a deliberate plan by  
18 the occupants of the car to  
19 approach to victim unnoticed so  
20 that the killing could be  
21 accomplished from a position of  
22 surprise and advantage. The  
23 relationship between appellant and  
24 the victim, each belonging to  
25 rival gangs between which there  
26 was bad blood provided evidence of  
27 the appellant's motive for the

1 shooting. The manner of the  
2 shooting, one person shooting and  
3 another driving so as to  
4 facilitate an easy and rapid  
5 escape especially when coupled  
6 with appellant's slow approach to  
7 the scene with his lights off  
8 reflects that the killing resulted  
9 from a pre-conceived desire."

10 This is about as callous, cold-blooded and  
11 calculated murder as you can have. The only  
12 thing was the appellant apparently did not pull  
13 the trigger. But he did everything short of  
14 that. The psych report in 1994, said well he  
15 didn't really want to go into the details of it  
16 because it was still on appeal. Current psych  
17 report just glosses over the apparent lack of  
18 insight and says because of his good behavior he  
19 is a low risk. I submit that until he  
20 demonstrates more credibility with the Panel and  
21 more insight into his actual role and  
22 participation, he has not taken responsibility  
23 for it and therefore his statements of remorse  
24 and the psych report are not actually supportive  
25 because they really didn't delve into it. The  
26 fact that he hadn't been caught in other crimes,  
27 had a minimal criminal record is commendable.



1 It's not really an escalating pattern of  
2 violence. He did have summary probation, but  
3 the inmate told the psychologist in 1994, which  
4 was also kind of troubling, that he had the  
5 mentality of a 15 year old. He indicated that  
6 this tragic event, being convicted of murder,  
7 was a quote "wake up call" --

8 ATTORNEY RUTLEDGE: Objection. It  
9 doesn't say being convicted of murder.

10 PRESIDING COMMISSIONER BIGGERS: What  
11 page are you on, sir?

12 DEPUTY DISTRICT ATTORNEY MORRISON: I  
13 just -- it doesn't. I am commenting on his  
14 psych report. He's -- the inmate indicated --

15 PRESIDING COMMISSIONER BIGGERS: Just a  
16 second, sir. Okay. Let's keep this civil and  
17 it's not written -- are you reading directly  
18 from the psychologist's report?

19 DEPUTY DISTRICT ATTORNEY MORRISON: I  
20 read it and then I made a parenthetical comment.

21 PRESIDING COMMISSIONER BIGGERS: Okay.  
22 Then perhaps you should paraphrase it saying  
23 your opinion. Continue.

24 ~~DEPUTY COMMISSIONER MEJIA:~~ What is  
25 interesting is talking about that the immature  
26 behavior at the time -- that's on Page One of  
27 the report, and he stated I had the mentality of

1 a 15 year old. The official version read  
2 described a juvenile man. The inmate was 25 at  
3 the time of his crime. This is not a youthful  
4 offender, unsophisticated (indiscernible). This  
5 isn't a 15 or 16 year old gang banger. This is  
6 a 25 year old out on a mission of revenge.

7 ATTORNEY RUTLEDGE: Objection. Mission  
8 of revenge? Where's that from? You're supposed  
9 to -- excuse me. I just want to note that the  
10 DA's supposed to -- your comments are supposed  
11 to be supported by documentation.

12 PRESIDING COMMISSIONER BIGGERS:  
13 (Indiscernible).

14 DEPUTY COMMISSIONER MEJIA: The Appellate  
15 Decision -- talking about a retaliatory gang  
16 opinion -- member for a --

17 PRESIDING COMMISSIONER BIGGERS: Let's --  
18 let's -- okay. Let's -- whenever --

19 DEPUTY DISTRICT ATTORNEY MORRISON: this  
20 is within the range of proper comment.

21 PRESIDING COMMISSIONER BIGGERS: Then Mr.  
22 Morrison, if we're gonna speculate I think we  
23 need to make sure that we say and we make

24 (indiscernible) in your opinion or -- I don't  
25 think that we should speculate on something of  
26 this nature.

27 DEPUTY DISTRICT ATTORNEY MORRISON:

1 Commissioner, excuse me, but I'm permitted to  
2 make public comment. I'm not asking you to  
3 speculate. The Appellate Decision describes --

4 PRESIDING COMMISSIONER BIGGERS: I  
5 understand --

6 DEPUTY DISTRICT ATTORNEY MORRISON: --  
7 any motivation --

8 PRESIDING COMMISSIONER BIGGERS: I  
9 understand that.

10 ATTORNEY RUTLEDGE: From another --

11 DEPUTY DISTRICT ATTORNEY MORRISON: There  
12 was a rival shooting. There was a rival  
13 shooting --

14 PRESIDING COMMISSIONER BIGGERS: I  
15 understand that.

16 DEPUTY DISTRICT ATTORNEY MORRISON: Now,  
17 if the gang goes out to retaliate --

18 PRESIDING COMMISSIONER BIGGERS: Then  
19 that's the way you should phrase it -- that  
20 based on --

21 DEPUTY DISTRICT ATTORNEY MORRISON: That  
22 is what gang members refer to as getting  
23 revenge.

24 ~~PRESIDING COMMISSIONER BIGGERS: I~~  
25 understand that, sir.

26 DEPUTY DISTRICT ATTORNEY MORRISON: And  
27 my comment is that he was out on a mission of

1 revenge that resulted in the death and a shot up  
2 neighborhood. And therefore, a particularly  
3 egregious crime under Dannenberg, as the Chair  
4 noted the case the inmate submitted, and he is  
5 unsuitable for parole and we ask for a three  
6 year denial. Thank you.

7 DEPUTY COMMISSIONER MEJIA: Let's --  
8 before you do your -- let me just put on the  
9 record that he does have the completion  
10 paperwork, because it was very confusing -- you  
11 had to really look at it. He did have Air  
12 Conditioning completion in October 1997. It's  
13 just confusing. It doesn't say he completed it.  
14 It says his assignment (indiscernible) and Mr.  
15 Plaza has completed 15 certification units, 100%  
16 of the class. Maybe that how we --

17 INMATE PLAZA: A hundred percent of what?

18 DEPUTY COMMISSIONER MEJIA: Of the class.  
19 I don't know what it means, sir, but it does say  
20 that he has completed -- units completed. This  
21 is the Education Progress Report. Normally they  
22 put here completed completion, but it just say  
23 completed some of the curriculum -- that's when  
24 ~~he was a Clerk. And then when he became a~~  
25 student he completed 15 certification units,  
26 100% of the class. So I would say that is  
27 completion.

1           PRESIDING COMMISSIONER BIGGERS: All

2 right thank you.

3           DEPUTY COMMISSIONER MEJIA: And then

4 another one is October 28, 2000 -- October 28th

5 -- April 28th, 1995, he completed his Vocational

6 Dry Cleaning. Another confusing chrono here.

7 We may have to look at it again. A handwritten

8 (indiscernible) Teacher's Aide and

9 (indiscernible) he was a key person assisting in

10 (indiscernible) Dry Cleaning program, all areas

11 in training and development of other students.

12 He has learned all aspects of this Dry Cleaning

13 business. And it's noted here, reason for the

14 termination, his job change -- Job change

15 completed. So which means I would say

16 (indiscernible) in 1994, (indiscernible) 1995 he

17 has completed the Dry Cleaning business.

18           PRESIDING COMMISSIONER BIGGERS: So

19 basically you're saying the chrono's in support

20 of completion; just don't have the --

21           DEPUTY COMMISSIONER MEJIA: Yeah, the

22 actual completions.

23           PRESIDING COMMISSIONER BIGGERS: The

24 actual completions. Ms. Rutledge, closing

25 please.

26           ATTORNEY RUTLEDGE: Thank you for

27 verifying that for us, Commissioner. While I'd

1 like to go off of the suitability factors, I  
2 think that's most appropriate. We're here today  
3 because we -- well you know why we're here, the  
4 legislature sets an open term for a crime such  
5 as this and -- meaning that there is a belief  
6 that persons committed for first-degree murder  
7 may at some point become suitable members of  
8 society, people who have paid their debt to  
9 society, bettered themselves, and we can all  
10 feel reasonably safe that they're out among us.  
11 Had this commitment offense been of the -- had  
12 it been truly lying in wait -- which is a  
13 special circumstance of first-degree murder  
14 punishable by death, we may not be sitting here  
15 today. The commitment offense itself, my client  
16 has taken responsibility for it. What was said,  
17 his testimony to the Court, matches what he has  
18 said in earlier reports. And, under Dannenberg,  
19 specifically Dannenberg, I think is supportive  
20 of when you have to -- and I know you have to  
21 weigh the commitment offense but weighing that  
22 in, Dannenberg says if it doesn't take more than  
23 it was necessary to complete the murder. This  
~~24 victim was shot and died within minutes.~~  
25 There's no evidence of mutilation, there's no --  
26 there were no other targeted victims. We found  
27 a bullet -- but we don't even know if anybody

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1 was home. There's no evidence that there were  
2 other people that were actually at harm at the  
3 time of the shooting. In moving on to my  
4 client's remorse for this offense. He has --  
5 he's expressed today his remorse for this crime,  
6 but I think more importantly his determination  
7 to turn himself around. Had he been such a hard  
8 core gang member, he'd never had made it this  
9 far. We know that. We know how it is to enter  
10 a prison on a Level IV and what it takes to  
11 survive. And it takes a lot of determination.  
12 It takes somebody who truly does realize that,  
13 you know, there's a better way to live. And, I  
14 think to his, you know -- the prison Chaplain  
15 (indiscernible) he doesn't write letters for  
16 very many inmates. This is the first one I've  
17 seen. And he wrote something really important  
18 because I think -- I think this really says it  
19 all about my client as far as remorse would go,  
20 I think that that I would speculate and submit  
21 that that's -- he could be programming doing  
22 everything he's supposed to do and not go to  
23 church. There's got to be some -- I would  
24 submit or speculate that perhaps he's got some  
25 insight and a conscience to where he feels the  
26 need to associate with the church. And, there  
27 was a paragraph that wasn't read during the

1 letters that I just wanted to say and it was  
2 written by Chaplain Lindsay. And it says,

3 "People often ask me what kind of  
4 results I see in my work here in  
5 the prison. I will hold up one  
6 hand showing the number five, and  
7 they will say those odds aren't  
8 very good since there are more  
9 than 7,000 plus inmates in your  
10 facility. To which I'll reply,  
11 you're right, except I look at it  
12 as mining for diamonds and when  
13 you find one you have some -- when  
14 you find one you have something of  
15 value."

16 Well, inmate Plaza is one of those diamonds.  
17 You know, I'm not going to sit her and  
18 regurgitate all of his accomplishments and the  
19 binder he provided to the Board -- we've gone  
20 over them. In every area of programming he's  
21 met -- he's met self-help, he admits his  
22 substance abuse, he's been treating that  
23 substance abuse, he's done Impact, he's done  
24 Anger Management, he's participating in sports,  
25 he has an excellent job record. He's actually  
26 got a chrono from his supervisor in Culinary  
27 who's recommending him for a job, I mean,



1 anticipating that an employer on the outside  
2 where the public has access to the restaurant.  
3 that he's going to present that in a public  
4 place and ask for employment. He has, you know,  
5 taken other health courses and has not had a 115  
6 or anything in 15 years, which is extremely  
7 commendable. And again, that more expresses, I  
8 think, his insight in to literally reversing his  
9 life. He said he was leading an irresponsible  
10 life at that time; however he did work and  
11 support his wife and children. Did you have one  
12 child at that time or --

13 INMATE PLAZA: Two.

14 ATTORNEY RUTLEDGE: He had two that he  
15 supported. So he did -- it was like he said, he  
16 was kind of a -- he was a dysfunctional person  
17 over all, but able to maintain a job and take  
18 care of his family which indicates that there  
19 are pro social qualities in this man. He's not  
20 just some thug out there, you know, blowing  
21 people away. He has a very stable social  
22 history as far as being with his family, being  
23 married. He's still married to the same woman;  
24 still has three children. Appreciates the  
25 impetus he put on her when he entered the  
26 institution and forced her into being a single  
27 parent. He's got letters from his children that

1 he's attempting to father from prison, cousins,  
2 other assortment of persons, and also he has at  
3 least two job offers. One from Mr. Rentaria  
4 (phonetic) and then one from his previous  
5 employer -- was it --

6 INMATE PLAZA: Yes.

7 ATTORNEY RUTLEDGE: -- where he worked.

8 He had a good job record there before he entered  
9 the institution. And aside from all the great  
10 things he's done which I think all point to  
11 suitability and the fact that he has expressed  
12 his remorse and does, by his actions not just  
13 his comments, have insight into how much trouble  
14 he created with this offense and saw what he  
15 needed to do to turn it around. But I think we  
16 do -- I think oftentimes in these types of cases  
17 there's the white elephant in the room, which is  
18 time. This is his first hearing and it's almost  
19 a given that nobody gets paroled their first  
20 hearing. I think the jargon is always he needs  
21 to maintain his gains or you point to the  
22 commitment offense, but I think that the  
23 suitability --

24 DEPUTY COMMISSIONER MEJIA: -- hold it.

25 [Thereupon the tape was changed to Tape Two.]

26 DEPUTY COMMISSIONER MEJIA: Okay, go  
27 ahead, continue. Second side, second set of

1 tapes for Mr. Plaza.

2 ATTORNEY RUTLEDGE: I do believe that  
3 this man meets every single suitability factor.  
4 He has completed his programming -- I mean, he  
5 remains active in his programming and he's done  
6 all those things necessary to show us that he's  
7 serious about release and I think the only  
8 question that would linger would be time,  
9 because often we don't see people paroled by  
10 their first hearing but I would say this man is  
11 one of the few cases that we see where he's  
12 suitable at his first hearing. He's suitable.  
13 He's prepared to enter the outside. He's got a  
14 plan and the information he submitted to the  
15 Board wherein he's going to -- exactly what he's  
16 going to do when he walks out the doors. I  
17 would just ask this Board -- I know it's a  
18 difficult job for you and I know you've gotta  
19 consider the person paying their debt to society  
20 because that's part of our justice system, but I  
21 would ask you to -- to give this man a different  
22 look as somebody who is suitable, who has served  
23 enough years according to what the Legislature  
24 said and please grant him a parole date, or if  
25 you find him suitable set a term for him today.

26 Thank you.

27 PRESIDING COMMISSIONER BIGGERS: Thank

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1 you, very much, Ms. Rutledge. Now Mr. Plaza you  
2 have the opportunity to tell this Panel why you  
3 feel that you are suitable for parole.

4 INMATE PLAZA: Sorry. A little nervous.  
5 I believe first of all if I could I'd like to --  
6 I'd like to explain a couple of things. One  
7 thing that I have heard a lot of times being  
8 incarcerated that I didn't know 16 years ago --  
9 I had no knowledge of what personal disorders  
10 were because I was so caught up in my drug and  
11 alcohol habit. I didn't look at -- I didn't  
12 look at things as I should have, not normally  
13 anyways. I realize that being anti social at  
14 the time, you know, had me do things that any  
15 normal personal would not do. It wasn't due --  
16 I'm not making excuses. I never say that, you  
17 know, some people do -- but I don't say that the  
18 drugs or the alcohol committed the crime. I  
19 understand that I was the one that made the  
20 choice, and I take full responsibility for that.  
21 But I do -- I also want to say that being anti  
22 social, you know, my problems started at about  
23 15 years old, basically. Fifteen years old, I  
24 hit high school started hanging out with the  
25 wrong crowd. Running with the guys, you know,  
26 that I shouldn't have -- had no business hanging  
27 around. But because they all were in the same

1 predicament, whether they were raised by a  
2 single parent or, you know, were also seeking  
3 some kind of, you know, some kind of family.  
4 Some kind of acceptance. And, being that I was  
5 in that same category looking for acceptance,  
6 like I said earlier, I chose to hang around with  
7 people that had a lot of similarities to me.  
8 And because I chose to hang around with those  
9 people I was around things that, you know, I  
10 shouldn't have been around and drugs and alcohol  
11 became my biggest problem. And I understand  
12 that, you know, again a personal disorder border  
13 line, I crossed a lot of border lines but laws  
14 specifically because by purchasing drugs and  
15 alcohol I was naturally breaking laws, you know,  
16 to purchase these products. Again, you know,  
17 narcissistic because I hung around with this  
18 group I kind of got the feeling that I was, you  
19 know, I should have respect or I should have  
20 things coming just because of who I was or who I  
21 hung around with. But upon coming to prison I  
22 can honestly say that the very first thing that  
23 helped me out was being incarcerated, of course,  
24 but going to AA. When I first went to AA I  
25 started realizing when I got to Step Four  
26 especially because you have to take that moral  
27 inventory, I started realizing and seeing

1 things. And the sponsor at that time he taught  
2 ~~us to look at things and to -- and to just, you~~  
3 know, call them what they are. If you're lying,  
4 then you're a liar. If you're stealing, then  
5 you're a thief. If you're doing -- whatever the  
6 circumstances might be. And so I did that, and  
7 I started looking at things and, you know, to be  
8 honest initially it was ugly and I -- some  
9 things you know you kinda don't want to accept  
10 because you want to think that, you know, you're  
11 not like that or you're better than that. I  
12 never wanted to accept to that, you know, that I  
13 had these problems, you know, because I thought,  
14 you know, hey I'm normal. There's nothing  
15 different about me than the next guy. But upon  
16 learning these things I started working on  
17 making that change, changing my life. AA led me  
18 to church. When I started going to church again  
19 that was a big help because the church started  
20 helping me again look at myself, and get an  
21 understanding. And, once I started to get that  
22 understanding I really began to make more  
23 change. And, as time went on -- I mean, I  
24 always got something out of the self-help  
25 groups. Every group had at least something to  
26 offer but as I went along I started learning, I  
27 started getting the insight of my crime of

1 myself and I started realizing as well the  
2 severity of my crime, you know, that it wasn't  
3 just, you know, something that happened, you  
4 know. It was way deeper than that. So, I  
5 started looking into these things. Upon looking  
6 into these things and really getting that  
7 understanding, Impact -- like I said earlier,  
8 the Impact was a great help to me. I started  
9 learning different things from Impact as well.  
10 Started getting a different perspective and  
11 getting more of a panoramic vision on life, you  
12 know, on everything that I'm involved in. What  
13 I do. It was a Captain who -- Captain Gega  
14 (phonetic), Unit Three Captain, she was the one  
15 who kind of, you know, gave me that opportunity  
16 as well to get into doing more than just the  
17 average guy that was in there. So, I started,  
18 you know, working with her. Working with her  
19 you see the problems in the paperwork. I was  
20 able when that riot broke out in the wing  
21 between the Nationals and the Bull Dogs, which  
22 is two different groups that are here -- even  
23 though I'm not a part of any of the groups I  
24 have a rapport because now people see me and  
25 they know that I'm the opposite of them. I'm  
26 constantly talking to people, trying to  
27 encourage them to be their own man, to make

1 their decisions, to not follow that peer  
2 ~~pressure and the crowd and do those things. And~~  
3 so they -- they tell me, you know, they see  
4 integrity in me, and it's something that you  
5 don't see in just everybody or anybody. So  
6 having that has helped me a lot. I believe that  
7 through them programs -- you also -- there was  
8 another letter in the packet. It was from  
9 Victory Out Reach out of here in San Jose. They  
10 have a program also. Not just here in San Jose.  
11 They have it in every County. It doesn't  
12 matter. I talked to Ed Morales who's the  
13 Director there. He says it doesn't matter what  
14 County you go to, they have a program that's  
15 called Cease Fire and because of the education  
16 and the insight that I've gotten through the  
17 program he's told me, wherever you go, I want to  
18 use you because you can get to these people.  
19 You can reach out and talk to these people so  
20 that there's never -- again there doesn't have  
21 to be another Mr. Littlebull. There doesn't  
22 have to be somebody in my position, you know.  
23 So that's what I look to do now, is to stop them  
24 kind of things. Deter people, you know, doing  
25 them kind of things. I know it's in the  
26 Appellate version as well, even though no one  
27 read it here today, but you know that upon my



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1 reaching the County Jail, you know, I was  
2 approached. Because, see, I was not<sup>x</sup> -- I was  
3 not an active member but I hung around with the  
4 crowd. So I was approached in the County Jail  
5 and, you know, was threatened. That was the  
6 County Jail. Upon reaching prison -- and it  
7 actually turned out to be one of the biggest  
8 favors they could do for me. I was approached  
9 in prison, and they told me, you're on your own.  
10 You don't run with us. We don't claim you. You  
11 don't claim us. Which was like I said, the  
12 biggest favor they could have done for me at  
13 that time. Because that was -- that was what  
14 got me started as well to make that change and  
15 not continue to try to pursue that road that I  
16 was on prior to that point. So, being that I  
17 was excommunicated -- it was good for me,  
18 because then, even though they told me you're on  
19 your own, and I know that in here not just  
20 anybody can be out on their own. You usually  
21 have to find a crowd or find a race or, you  
22 know, someone. You usually gotta, you know,  
23 hang out with somebody. But I was able to do  
24 it. I was able to go on my own. And I started  
25 to take the attitude too that, you know what,  
26 I'm not gonna pay attention what other people  
27 say. I don't care what, you know, what they say

1 or do because I want to be that person that I  
2 know I can be. And even my own mother told me  
3 that one time on visit six, seven years ago.  
4 She said, you know, you've turned into that man  
5 that I always wanted you to grow up to be, you  
6 know. I understand that today I have an  
7 opportunity to get out, come before you, and to  
8 put all these things in practice. As my  
9 attorney said, not just talk the talk but walk  
10 the walk. And, I have things in place. I have  
11 things, you know, set up where I can go and be a  
12 part of society and I can go and make a  
13 difference and hopefully like I said before get  
14 at, you know, not just youngsters, anybody.  
15 Whether they're young or old, and be able to  
16 share with them and explain to them, you know,  
17 educate them. You know, I'm all for  
18 intervention. Intervention is good. But,  
19 prevention is even better. You know,  
20 intervention the problem's already there. But  
21 prevention, the problems' not there yet or  
22 hasn't got to that point where, you know, it's  
23 too the extreme. So, I hope that today, you  
24 know, the Panel would surely take a look and  
25 consider me because I believe with the things  
26 that I have, with all the support system that I  
27 have, with the plans and the goals that I have

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1 -- and it's not something that I did all my  
2 life, but I do have plans and goals. And I  
3 believe those plans and goals that I have now  
4 are going to be the things that help me to  
5 succeed, and I have no problem with any kind of  
6 parole to the extreme conditions. Testing, you  
7 know. Whatever I need to do. I have no problem  
8 whatsoever. And so I -- I just ask if, you  
9 know, you Panel members today would consider me  
10 as being suitable and I thank you and I do want  
11 also would like to say that this packet here was  
12 not a personal attack on you. It was not meant  
13 to be, you know, in any way personal. I do have  
14 to say it's my first one and being unfamiliar I  
15 did allow other people to kind of give me a  
16 little helping hand, and if there was anything  
17 that, you know, was not necessary or was an  
18 overkill it was not done intentionally and once  
19 my final statement because I want to make sure  
20 that you know is that, again, I take full  
21 responsibility for the taking of the life of Mr.  
22 Littlebull and I thank you.

23 PRESIDING COMMISSIONER BIGGERS: We will  
24 recess at this point.

25

R E C E S S

26

--oOo--

27

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER MEJIA: We're back on  
4 record for our decision -- on tape.

5 PRESIDING COMMISSIONER BIGGERS: Let the  
6 record reflect that everyone that was in the  
7 room prior to us recessing for deliberations are  
8 now back in the room. The Panel has reviewed  
9 all information received from the public and  
10 relied on the following circumstances in  
11 concluding the prisoner is not suitable for  
12 parole and would pose an unreasonable risk of  
13 danger to society or a threat to public safety  
14 if released from prison. The offense was  
15 carried out in an especially cruel and callous  
16 manner in that this was a drive-by shooting  
17 where a Mr. Patrick Littlebull, the victim, was  
18 shot and killed as a retaliatory type crime  
19 based on what was in the Appellate Decision.  
20 This offense was carried out in a calculated  
21 manner, and I'll read from the -- that the --  
22 decision that Mr. Plaza was

23 "-- driving slowly with his lights  
24 out thus eliminating attention to

25 his approaching car was strong

26 evidence of prior planning. The

27 JESUS PLAZA H-12371 DECISION PAGE 1 05/01/06

1 approach without lights is  
2 factually similar to lying in  
3 waiting and illustrates a  
4 deliberate plan by the occupants  
5 of the car to approach to victim  
6 unnoticed so that the killing  
7 could be accomplished from a  
8 position of surprise and  
9 advantage."

10 The motive for the crime was very trivial in  
11 that it was a gang related shooting, and these  
12 conclusions was drawn from the Statement of  
13 Facts from the Appellate Decision. You have no  
14 -- your criminal record was of no significance  
15 to us because you had very little if any. You  
16 have programmed extremely well. You should be  
17 commended for no disciplinary actions. Your  
18 psychiatric evaluation was favorable. Your  
19 parole plans were favorable. Your 3042 response  
20 from the District Attorney was opposed to your  
21 -- a finding of parole suitability, and you have  
22 numerous letters of support. The Panel  
23 struggled with this for quite some time,  
24 basically because of a couple things that I will  
25 go over with you right now. First of all, the  
26 signs of remorse for the victim. You say you  
27 JESUS PLAZA H-12371 DECISION PAGE 2 05/01/06

1 take full responsibility for the crime, but when  
2 Deputy Commissioner Mejia started talking to you  
3 about the crime and what you took from the  
4 victim, you went off and you started talking  
5 about collateral effects of the families and all  
6 the others but you never mentioned about the  
7 victim. You need to -- and with that, that  
8 gives us an indication that you really haven't  
9 taken -- you're minimizing your involvement in  
10 the crime by not knowing exactly what happened  
11 to the victim. You need to get that out. We  
12 -- as I said, we talked about it for quite some  
13 time because we just feel that you're not --  
14 it's -- you're just taking responsibility for  
15 the crime is superficial, and we need to get  
16 genuine remorse. So, the big thing is remorse  
17 for the victim. We also feel that your gains  
18 are recent, as illustrated by when we talked to  
19 your earlier and the District Attorney even  
20 brought this up and I went back and went over  
21 the Appellate Decision as well as the sentencing  
22 thing for -- you indicated initially that you  
23 were not involved with the shooting. Then you  
24 say you were when they told you about your

25 vehicle, and that's when you mentioned about the  
26 gun. They found the gun within (indiscernible).

1 We note that you are doing extremely well  
2 programming, but we just feel that you need to  
3 have more time. You should be commended for  
4 your program that you have been involved with,  
5 your Vocational Dry Cleaning, your Air  
6 Conditioner Refrigerator, AA and NA, and the  
7 Impact and Anger Management courses that you are  
8 working with right now. In a separate decision,  
9 the hearing Panel thought it's not reasonable to  
10 expect that parole will be granted in a hearing  
11 in the following two years. Again, the crime  
12 itself was just especially cruel and callous in  
13 that you (indiscernible) on an individual who  
14 was vulnerable. He didn't have a weapon; he's  
15 walking down the street, and you and your  
16 co-defendant shot him. And, we realize that you  
17 only drive the vehicle, but the mere fact that  
18 you were there with your lights off is a strong  
19 indication that you knew what was going to take  
20 place. The -- and the motive for the crime as  
21 we talked about earlier, was very trivial in  
22 that this was a gang retaliation. All  
23 indications point to this was a gang  
24 retaliation. Once you've become -- once you've  
25 come to grips with what transpired, allow  
26 yourself to not minimize the involvement of what  
27 JESUS PLAZA H-12371 DECISION PAGE 4 05/01/06

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1 think you'll be okay, because you're definitely  
2 on the road to getting a date. But you've got  
3 to take that remorse to the victim, you can't  
4 generalize. You said I take full  
5 responsibility. You got to take it from not the  
6 family. You've got to take responsibility for  
7 Patrick.

8 INMATE PLAZA: I understand.

9 PRESIDING COMMISSIONER BIGGERS: Mr.  
10 Mejia?

11 DEPUTY COMMISSIONER MEJIA: No further  
12 comments from me.

13 PRESIDING COMMISSIONER BIGGERS: Okay.  
14 Good luck to you. That concludes the hearing.  
15 The time is now ten minutes to --

16

17

18

19

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23 PAROLE DENIED TWO YEARS

AUG 29 2006

24 THIS DECISION WILL BE FINAL ON:

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT  
26 DATE, THE DECISION IS MODIFIED.

27 JESUS PLAZA H-12371 DECISION PAGE 5 05/01/06



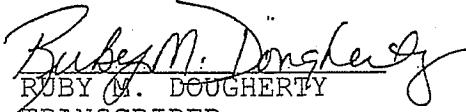
94

CERTIFICATE AND  
DECLARATION OF TRANSCRIBER

I, RUBY M. DOUGHERTY, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total TWO in number and cover a total of pages numbered 1 - 93, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the INITIAL PAROLE CONSIDERATION HEARING for JESUS PLAZA, CDC NO. H-12371, on MAY 1, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated MAY 30, 2006, at Sacramento, California.

  
RUBY M. DOUGHERTY  
TRANSCRIBER  
PETERS SHORTHAND REPORTING

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# EXHIBIT B

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LIFE PRISONER EVALUATION REPORT  
INITIAL PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR  
ADDENDUM

PLAZA, JESUS

H12371

This addendum is being submitted as a correction to some inaccuracies that were found in the Board Report for Plaza's Initial Parole Consideration Hearing.

On Page 2 of the report under Aggravating Circumstances: it says use of weapon: Gun, 9mm. That information was taken from the POR pg. 2. In the Court Transcripts for the Court of Appeal of the State of California Second Appellate District Division Two Page 3, it states that a .38 revolver was found in a hollow space underneath the dashboard of the suspects. A ballistic test indicated that an expended bullet found at the scene on Loveland Street was fired from the gun that was recovered.

Under the Preconviction Factors: C. Personal Factors: The Board Report states that Plaza was born 2/7/65 to Caroline and Jessie Plaza. This should be corrected as follows: Plaza was born 3/7/65 to Caroline and Jesus Plaza. Plaza also said that his marriage took place on 5/12/84 and not 5/7/84.

Postconviction Factors: Should read as follows; Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary, pre-voc. and Computer Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

**Inmate Copy**

Sent to inmate on 11/29/05

PLAZA

H12371

CTF-SOLEDAD

LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
2006 CALENDAR

2

T. Verdesoto 11-16-05  
T. Verdesoto Date  
Correctional Counselor I

D. Carnazzo CII 11-16-05  
D. Carnazzo Date  
Correctional Counselor II

I. Guerra FC(R) 11-16-05  
I. Guerra Date  
Facility Captain

D. S. Levorse CPR 11-18-05  
D. S. Levorse Date  
Classification and Parole Representative

LIFE PRISONER EVALUATION REPORT  
INITIAL PAROLE CONSIDERATION HEARING  
~~DECEMBER 2005 CALENDAR~~

PLAZA, JESUS

H12371

I. COMMITMENT FACTORS:

- A. Life Crime: Murder 1<sup>st</sup>, (PC 187), Los Angeles County Case #VA004108..  
Sentenced: 25 years to Life. Weapon: Gun. MEPD: 1/25/07. Received in  
CDC: October 9, 1991. Victim: Patrick Littlebull, age: unknown.

1. Summary of Crime: The defendant, Jesus Plaza, and another subject were seen driving a vehicle near the victim, Patrick Littlebull. A witness heard a series of shots and saw the victim Patrick collapse onto the floor. Officers arrived at the scene of a residential street in Bell Gardens and found Patrick lying on the floor in a puddle of blood. Paramedics arrived shortly after and pronounced him dead at the scene. Victim's autopsy indicated that his death resulted from a single gunshot wound to the right lateral side of his chest.

Several witnesses gave officers information about the suspects vehicle, and approximately 1 hour later, police saw the vehicle and detained the defendant along with a second suspect. Officers observed a .9mm casing on the floor board of the vehicle in front of the passenger. Both Plaza and his companion were arrested and later evaluated for evidence of gunshot residue. (Source: POR pg 2, 3 &4).

2. Prisoner's Version: First and foremost to each family member and friend of Mr. Littlebull. Knowing that there are no special, no specific, nor any amount of words that could right the wrong I did. Nor can any words equal or be greater than the crime in a good way, I wholeheartedly apologize yet due to multiple counseling programs and self help programs that I have seeked out throughout my incarceration. I've gained knowledge and an understanding of my crime and true remorse, and so I take full responsibility for my choices and actions in the commitment of this crime and also stipulate to the P.O.R. as being true and accurate.

3. Aggravating/Mitigating Circumstances:

- a. Aggravating Factors:

INMATE COPY

PLAZA, JESUS

H12371

CTF-SOLEDAD

DEC/2005

SENT TO I/M ON 9/22/05

LIFE PRISONER EVALUATION REPORT  
 PAROLE CONSIDERATION HEARING  
 DECEMBER 2005 CALENDAR

2

- ❖ Victim was particularly vulnerable.
- ❖ Prisoner had opportunity to cease but continued with crime.
- ❖ Murder was senseless and served no purpose in completing the crime.
- ❖ Use of weapon: Gun, .9mm.
- ❖ Nature of crime exhibited viciousness, cruelty or callousness.

b. Mitigating Factors:

- ❖ Prisoner has minimal or no history of criminal behavior.

B. Multiple Crime(s): N/A.

1. Summary of Crime: NA.
2. Prisoner's Version: NA

II. PRECONVICTION FACTORS:

A. Juvenile Record: None noted in Central File.

B. Adult Convictions and Arrests:

- ❖ 07/16/83 PC 594 (a) Vandalism.
- ❖ 09/17/83 PC 187 Attempted Murder (no disposition).
- ❖ 04/02/84 PC 594 Malicious Mischief/Vandalism.

C. Personal Factors: Plaza was born 2/7/65 to Caroline and Jessie Plaza. He has four sisters and a brother. Plaza graduated from high school 5/17/83 from Vail High in Montebello, CA, and then married Guadalupe Falcon on 5/7/84 and they have three children, Ramona, and Justina, and Izaiah.

III. POSTCONVICTION FACTORS:

A. Special Programming/Accommodations: N/A.

B. Custody History: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92 Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary and pre-voc. Plaza was again transferred to CSP LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the dry cleaning and voc electrical shop. On 12/16/97 he was transferred to Avenal, and on 3/13/98 he was transferred to

LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR

3

CTF Soledad. While at CTF, Plaza was assigned to PIA Textiles. On 12/31/98 Plaza went to CMC-E as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF, Plaza has been assigned as a porter, a dental assistant and has worked in the culinary.

- C. Therapy and Self-Help Activities: Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir. Refer to Post Conviction Progress Reports for more details.
- D. Disciplinary History: Plaza has remained disciplinary free throughout his incarceration.
- E. Other: N/A.

IV. FUTURE PLANS:

- A. Residence: Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr. Simi Valley, California 93063. His phone number is (805) 581-6323
- B. Employment: Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone #(805) 578-7303.
- C. Assessment: In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing.

V. USINS STATUS: NA.VI. SUMMARY:

- A. Prior to release the prisoner could benefit from:

1. Continuing to be disciplinary free.
2. Participation in self-help and therapy programs.
3. Upgrading vocationally and educationally.

LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR

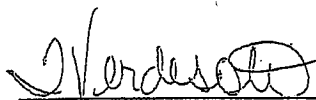
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- B. This report is based upon an interview with the prisoner on 9/1/05 lasting approximately 1 hour(s) and a complete review of the Central File lasting 3 hours(s).
- C. Per the Olson Decision, Plaza was afforded an opportunity to examine his Central File on 9/1/05, Plaza did examine his Central File. (Refer to CDC 128-B dated 9/1/05 in the General Chrono Section of the Central File.)
- D. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.



LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR

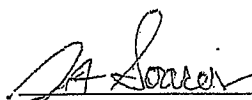
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9-20-05

T. Verdesoto  
Correctional Counselor I

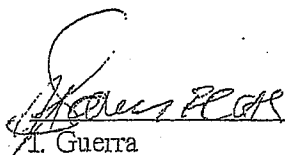
Date



9/21/05

J. Soares  
Correctional Counselor II

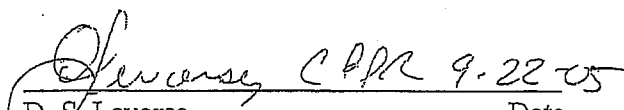
Date



9/21/05

I. Guerra  
Facility Captain

Date

 CAPR 9-22-05

D. S. Levorse  
Classification and Parole Representative

Date

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# EXHIBIT C

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1/14 copy

**MENTAL HEALTH EVALUATION FOR  
THE BOARD OF PRISON HEARINGS  
May, 2006 Lifer Calendar**

**CORRECTIONAL TRAINING FACILITY SOLEDAD  
APRIL, 2006**

NAME: PLAZA, JESUS  
CDC#: H-12371  
DOB: 3/7/65  
OFFENSE: PC 187 MURDER, FIRST DEGREE  
DATE OF OFFENSE: 5/26/90  
SENTENCE: 25 YEARS TO LIFE  
EVALUATION DATE: 4/16/06  
MEPD: 1/25/07

**I. IDENTIFYING INFORMATION:**

Mr. Jesus Plaza is a 41 year old, first term, Hispanic, married male from Los Angeles County. He is an active Christian. He has served 16 years on his sentence.

**SOURCES OF INFORMATION:**

This report is based upon a single 90 minute interview, plus review of the central and medical files.

**II. DEVELOPMENTAL HISTORY:**

When questioned about prenatal and perinatal issues, he stated that he was born at General Hospital, and his birth was normal. He progressed through developmental milestones in a normal manner. He is the second of four children. ~~There is no history of cruelty to animals, enuresis or arson. He was never abused~~ as a child, either sexually, physically or emotionally. He did have accidents as a child. One time he fell off of a pipe, injuring his leg on a fish tank. At the age of eleven he was involved in a car accident and injured his left knee which had recently been fixed through surgery.

Plaza

H-12371

CTF-Soledad

4/15/06

PLAZA, JESUS  
H-12371  
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PAGE 2

**III. EDUCATION:**

He attended public school and graduated from Vail High School in Montebello. He was never suspended or expelled. He has continued his education by attending college classes. He is attending Coastline Junior College at this time by correspondence, working towards his AA degree. He has 15 more credits until he gets his AA degree.

**IV. FAMILY HISTORY:**

Mr. Plaza's biological parents separated when he was about four years of age. He was raised primarily by his mother and maternal grandparents. His mother is currently employed by St. Francis Hospital, and his father worked for years as a mechanic and an auto body repairman. He is now 66 years of age and has retired. He has one older sister that works for General Electric in Pennsylvania, a younger sister who is mainly retarded who lives with his mother, and one younger brother who is married and working as a sales manager of a container corporation. There is no family history of mental illness, of drug abuse, of alcoholism, or of legal problems.

**V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:**

Mr. Plaza is heterosexual. There is no history of high risk behavior or of problems.

**VI. MARITAL HISTORY:**

He has been married one time. He was married on 5/12/84 to Guadalupe who lives in Whittier. There are three children. Ramona, 21 years of age, is working as a R.N. at St. Francis Hospital. Justina is 19 and is attending Cerritos College. Isaiah is 10 years of age. His marriage is intact, and his wife is supportive. He indicated that he has a very close relationship with his wife and children. They keep in close contact by correspondence, phone calls and several visits a year.

**VII. MILITARY HISTORY:**

There is no military history.

PLAZA, JESUS  
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**VIII. EMPLOYMENT/INCOME HISTORY:**

Right after he graduated from high school at the age of 18, he went to work for Century Plastics, where he worked for 4 ½ years. This company made fiberglass products for airplanes. He was the lead man there. In 1987, he went next door to work for Century Arrow doing the same kind of work. These two companies are owned by the same people. One year before the commitment offense, he began working for an asbestos abatement company as a laborer.

In the institution, he has obtained several trades. He has completed Vocational Dry Cleaning, Vocational Air Conditioning, Refrigeration and Heating, Vocational Meat Cutter, and he also has completed a correspondence course as a home inspector. Currently he is working as a meat cutter in culinary.

**IX. SUBSTANCE ABUSE HISTORY:**

Mr. Plaza stated that he did have an alcohol and drug problem from the ages of 15 to 25. He would drink alcohol primarily on weekends, because he had to work during the week. He smoked some marijuana. He also snorted cocaine about three times a week at the age of 16. At the age of 20, he began using cocaine every other day. He attends Alcoholics Anonymous and Narcotics Anonymous. He attends as often as he can, and he has been going steadily to these programs for the last 13 or 14 years.

**X. PSYCHIATRIC AND MEDICAL HISTORY:**

There is no psychiatric history. There is no history of serious hospitalizations, other than his surgery on his left knee. There is no history of serious accidents or of head injuries or seizures. His health is good.

**XI. PLANS IF GRANTED RELEASE:**

Mr. Plaza plans to return to his old employer in Simi Valley. He also will be able to live with his brother in that area. He will be compliant with all parole rules and regulations. He does have strong family support in the community. The prognosis for successful community living in this case is excellent.

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### CLINICAL ASSESSMENT

#### XII. CURRENT MENTAL STATUS/TREATMENT NEEDS

Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts degree. His grades are very good. Also, he has obtained a certificate as a home inspector from a professional career development institute in Georgia by correspondence. In addition, he has completed several courses towards self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

#### CURRENT DIAGNOSTIC IMPRESSION

Axis I: Drug and alcohol use by history  
Axis II: No personality disorder  
Axis III: No physical disorder  
Axis IV: Life term incarceration  
Axis V: Current GAF: 95

#### XIII. REVIEW OF LIFE CRIME

Mr. Plaza discussed the details of the commitment offense. He accepts full responsibility for this offense. He feels very badly that the victim died. He is fully aware that the victim's family has suffered greatly at the loss of their father and husband. The fact that gunshots were fired was a total surprise to Mr. Plaza. He had no idea that this was going to happen, and there certainly was no intent on his part. He is very aware of the repercussions of this offense. Even today his wife, children and mother are being watched and approached about this situation

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4/15/06  
PAGE 5

by gang members. He is very concerned about their welfare. All of these situations are a result of the commitment offense. Needless to say Mr. Plaza feels deep feelings of sorrow, remorse and grief over this situation.

At the time of the commitment offense, Mr. Plaza had been using cocaine and alcohol. His judgment at that time was impaired by his use of these substances. At the time of the commitment offense he was actually under the influence. However, after 16 years there is no evidence of any involvement in drugs or in alcohol. He has continuously attended Alcoholics Anonymous and Narcotics Anonymous over the years. Since he has become Christian, he has strong values against the use of drugs or alcohol at this time in his life. He is certainly familiar with the destructive effects of this involvement. As a result, he has determined to never become involved in drugs or alcohol again in his life. This information is of historical importance only because it is not currently a diagnostic problem.

#### XIV. ASSESSMENT OF DANGEROUSNESS

- A. In considering potential for dangerous behavior in the institution, Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time at this prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. Due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

- B. In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-



PLAZA, JESUS  
H-12371  
4/15/06  
PAGE 6

Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

- C. At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this is no longer an issue. Therefore, there are no significant risk factors in this case.

#### XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS

There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon his release. He has very strong family support in the community. All of these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All of these factors indicate that his prognosis for successful adjustment in the community is excellent.

*M. Macomber, Ph.D.*

M. Macomber, Ph.D.  
Correctional Psychologist  
Correctional Training Facility, Soledad

*B. ZIKA, Ph.D.*

B. ZIKA, Ph.D.  
Senior Psychologist  
Correctional Training Facility, Soledad

D: 4/15/06  
T: 4/19/06



# EXHIBIT D

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DEPT 100

Date: SEPTEMBER 6, 2007

Honorable: STEVEN R. VAN SICKLEN  
NONEJudge: JOSEPH M. PULIDO  
Bailiff: NONEDeputy Clerk:  
Reporter

(Parties and Counsel checked if present)

BH004502

In re,

JESSE PLAZA,

Petitioner,

On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

## Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus filed on February 23, 2007 by the Petitioner. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the determination that the Petitioner presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4<sup>th</sup> 616, 667.

The Petitioner was received in the Department of Corrections on October 9, 1991 after a conviction for murder in the first degree with a firearm. He was sentenced to 25 years to life. His minimum parole eligibility date was January 25, 2007. The record reflects that on May 26, 1990, the Petitioner was driving with fellow gang members on a street known to be the territory of a rival gang. The Petitioner drove slowly, with the headlights turned off, as he approached the victim, a rival gang member, who was standing in front of a house. As the Petitioner drove by, his accomplice fired several shots at the victim. The victim was shot and killed. The Petitioner then sped away. A witness heard the gunshots and saw the Petitioner's car speed away called the police and the Petitioner and his accomplices were pulled over and arrested.

The Board found the Petitioner unsuitable for parole after his first parole consideration hearing held on August 29, 2006. The Petitioner was denied parole for two years. The Board concluded that the Petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision primarily upon his commitment offense.

The Court finds that there is some evidence to support the Board's finding that the Petitioner's offense was carried out in a calculated and dispassionate manner. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The Petitioner drove slowly with his headlights turned off, so as to avoid detection as he approached the victim. This demonstrates that the shooting was planned and that the Petitioner was deliberately driving toward the victim for that purpose. Additionally, the Petitioner's accomplice was armed with a gun for the purpose of shooting the victim. Regardless of whether the Petitioner himself shot the victim, he was acting in concert with his accomplice and, therefore, the shooting is imputed to him.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DEPT 100

Date: SEPTEMBER 6, 2007

Honorable: STEVEN R. VAN SICKLEN

Judge

JOSEPH M. PULIDO

Deputy Clerk

NONE

Bailiff

NONE

Reporter

(Parties and Counsel checked if present)

BH004502

In re,

JESSE PLAZA,

Petitioner,

On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

The Court also finds that there is some evidence to support the Board's finding that the Petitioner's motive was very trivial in relation to the offense. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The Petitioner and his accomplice shot the victim merely because he was a rival gang member. There is no evidence that the victim had threatened or harmed the Petitioner in any way. Gang rivalry is a very trivial motive for killing a man.

Additionally, the Court finds that the Board did not err in denying the Petitioner parole for a period of two years. The Board must articulate reasons that justify a postponement, but those reasons need not be completely different from those justifying the denial of parole. See *In re Jackson* (1985) 39 Cal.3d 464, 479. The Board indicated that the Petitioner was denied parole for two years because his commitment offense was calculated and dispassionate and against a particularly vulnerable victim; his motive was trivial; and he failed to show adequate remorse for the victim. These reasons were sufficient to justify a two-year denial.

Accordingly, the petition is denied.

The court order is signed and filed this date. The clerk is directed to give notice.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Jesse Plaza  
H-12371  
Correctional Training Facility  
P.O. Box 689  
Soledad, California 93960-0689

Department of Justice- State of California  
Office of the Attorney General  
300 South Spring Street  
Los Angeles, California 90013

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		<b>CONFORMED COPY</b>  SEP 07 2007  <b>LOS ANGELES SUPERIOR COURT</b>  Joseph M. Pulido
PLAINTIFF/PETITIONER:  JESSE PLAZA		
<b>CLERK'S CERTIFICATE OF MAILING</b> CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		CASE NUMBER:  BH004502

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- |  |  |
|--|--|
| <input type="checkbox"/> Order Extending Time            | <input checked="" type="checkbox"/> Order re: Writ of Habeas Corpus                          |
| <input type="checkbox"/> Order to Show Cause             | <input type="checkbox"/> Order   |
| <input type="checkbox"/> Order for Informal Response     | <input type="checkbox"/> Order re:   |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of Petition for Writ of Habeas Corpus for the Attorney General |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

September 7, 2007  
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Joseph M. Pulido, Clerk  
Joseph M. Pulido

Jesse Plaza  
H-12371  
Correctional Training Facility  
P.O. Box 689  
Soledad, California 93960-0689

Department of Justice- State of California  
Office of the Attorney General  
300 South Spring Street  
Los Angeles, California 90013

**DOCKETING**

**EXHIBIT D**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JESSE PLAZA,

On Habeas Corpus.

B202665

(Super. Ct. No. VA004108)

**ORDER**

THE COURT:

The court has read and considered the petition for writ of habeas corpus filed October 9, 2007. The petition is summarily denied.

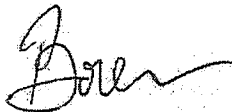
COURT OF APPEAL - SECOND DIST.

**FILED**

NOV 8 - 2007

JOSEPH A. LANE Clerk

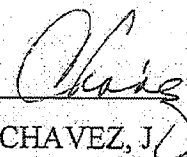
J. GUZMAN Deputy Clerk



BOREN, P.J.



ASHMANN-GERST, J.



CHAVEZ, J.

# **EXHIBIT E**

## **Part 1 of 2**



IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JESSE PLAZA,

Petitioner,

v.

BEN CURRY, Warden,  
Correctional Training Facility,

Respondent.

**S 158421**  
Case No. \_\_\_\_\_

Los Angeles County  
Superior Court  
Case No. VA004108

Court of Appeals,  
Second Appellate  
District, Division  
Two.  
Case No. B202665

SUPREME COURT  
**FILED**

NOV 21 2007

Frederick K. Ohlrich Clerk

Deputy

PETITION FOR REVIEW

JESSE PLAZA  
CDC No. #H-12371  
CTF Central F-338U  
P.O. Box 689  
Soledad, CA 93960-0689

Petitioner In Pro Per

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JESSE PLAZA,

Petitioner,

v.

BEN CURRY, Warden,  
Correctional Training Facility,

Respondent.

Case No. \_\_\_\_\_

Los Angeles County  
Superior Court  
Case No. VA004108

Court of Appeals,  
Second Appellate District  
Division Two.  
Case No. B202665

PETITION FOR REVIEW

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO THE  
HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA

Petitioner, JESSE PLAZA, petitions this court for review following the decision of the Court of Appeals, Second Appellate District, Division Two, filed in that court on October 9, 2007, and denied in that same court on November 8, 2007. A copy of the postcard denial is attached hereto as Exhibit "A". Petitioner did not receive notice of this denial until November 13, 2007, also see Exhibit "A".

Question(s) Presented

1) Is the Board of Parole Hearings violating the Petitioner's State and Federal Due Process Rights when parole suitability determinations are not supported by "some evidence", and was the "some evidence" standard correctly applied in this case?

1       2) Can the California Parole Board continuously deny parole to a  
2 prisoner based on the gravity, i.e., seriousness of their commitment  
3 offense, after they have served a Penal Code B3041(a) / CCR 15 B2403(c)  
4 uniform term equal to the gravity of their crime, when the prisoner has  
5 met all prerequisite conditions to be found suitable for release and  
6 no-longer poses a threat to public safety?

7       3) Was the Board's unsuitability determination supported by evidence  
8 that would bring Petitioner's case within the terms of Penal Code  
9 B3041(b)?

10       4) Was the Board's reasoning for denial an abuse of discretion?  
11

12                   NECESSITY FOR REVIEW

13       A granting of review and resolution of these issues by this Court  
14 are necessary to secure uniformity of decision and to settle important  
15 questions of law. Courts may review the parole decisions of the Board  
16 of Parole hearings for abuse of discretion. (In re Ramirez, supra, 94  
17 Cal.App.4th at 561-64. Accord In re Rosenkrantz, (2002) 29 Cal.4th 616,  
18 625-26, 656-57). The Board's discretion is abused by factual findings  
19 that are not supported by "some evidence". (Id. at 563). The Board's  
20 discretion is also abused by decisions that are arbitrary and capricious  
21 in the sense that they are not based upon the applicable legal standards.  
22

23           The courts may properly determine whether the Board's  
24 handling of parole applications is consistent with  
25 the parole policies established by the Legislature...  
26 While courts must give great weight to the Board's  
27 interpretation of the parole statutes and regulations,  
28 final responsibility for interpreting the law rest  
with the courts.

(In re Ramirez, supra, 94 Cal.App.4th at 564, citations omitted.)

1 Furthermore, petitioner respectfully submits that reviewing the  
2 cases of In re Ramirez, (2002) 94 Cal.App.4th 549; and Biggs v. Terhune,  
3 (9th Cir. 2003) 334 F.3d 910, together demonstrates the lack of uniformity  
4 in applications of the due process standard and that the decision in  
5 the instant case conflicts with the announced Federal Due Process standard  
6 delineated in Biggs v. Terhune, (9th Cir. 2003) 334 F.3d 910. This case  
7 also provides this Court with the opportunity to redefine the meaning  
8 of the "particularly egregious" standard found in In re Ramirez, (2001)  
9 94 Cal.App.4th 549 and In re Rosenkrantz, (2002) 29 Cal.4th 616.

10 In summary, Petitioner respectfully submits that in this case "some  
11 evidence" having an indicia of reliability does not support each of the  
12 Board's findings a required by the United States Constitution, Fifth  
13 and Fourteenth Amendments, the California Constitution Article I, section  
14 15, and Biggs v. Terhune, (9th Cir. 2003) 334 F.2d 910, in not doing  
15 so, the Board continues to violate Petitioner's State and Federal  
16 Constitutional Rights to Due Process.

#### 17 18 INTRODUCTION

19 On May 1, 2006, Petitioner appeared before the Board of Parole  
20 Hearings for parole consideration and was found unsuitable for parole  
21 based in the unchanging factors, the circumstance of his offense. He  
22 received a two year denial. Petitioner filed in the Los Angeles County  
23 Superior Court a Petition for Writ of Habeas Corpus challenging the  
24 Board's decision to deny Petitioner a release date. On September 6, 2007,  
25 that petition was denied by the Honorable Steven R. Van Sicklin (Case  
26 No. çBH004502) On October 9, 2007, Petitioner filed in the Court of  
27 Appeal, Second Appellate District, Division Two, challenging the Board's  
28 decision denying him parole. On November 8, 2007, that petition was also

1 denied by the Court of Appeal, Second Appellate District, Division Two.  
2 (Case No. 08B202665). Petitioner now submits the instant petition seeking  
3 review by this Honorable Court.....  
4  
5  
6

7 - See attached petition -

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## 6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

THE NINTH CIRCUIT COURT OF APPEALS HAS FOUND THAT THE MANDATORY LANGUAGE OF P.C. 3041  
(b) IMPOSES AN AFFIRMATIVE OBLIGATION BY THE CALIFORNIA BOARD OF PAROLE HEARINGS  
TO GRANT PAROLE, WHICH CREATES A LEGALLY COGNIZABLE LIBERTY INTEREST IN PAROLE  
AND A PRESUMPTION THAT PAROLE RELEASE WILL BE GRANTED. THERE IN NO EVIDENCE HAVING  
AN "INDICIA OF RELIABILITY" THAT PETITIONER IS A CURRENT OR UNREASONABLE RISK TO  
SOCIETY. THE HEARING AND DECISION BY THE CALIFORNIA PAROLE BOARD WAS ARBITRARY AND  
CAPRICIOUS IN VIOLATION OF PETITIONER'S STATE AND FEDERAL DUE PROCESS RIGHTS.

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who did exactly what to violate your rights at what time (when) or place (where).* (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Petitioner, JESSE PLAZA, petitions for a writ of habeas corpus and  
 by this verified petition alleges as follows:

## I

Petitioner is in custody of the California Department of Corrections  
 at the Correctional Training Facility in Soledad, California serving  
 a term of 25 years to life following his conviction in 1991 in Los Angeles  
 County Superior Court Case No. VA004108 wherein petitioner was convicted  
 of first degree murder in violation of Penal Code section 187. Petitioner  
 was received by the Department of Corrections on October 9, 1991, when  
 his life term commenced. This petition is intended to give meaning to  
 Petitioner, JESSE PLAZA, (hereinafter "Petitioner"), sentence of 25 years  
 to life for 'first degree murder'. On May 1, 2006, Petitioner went before  
 the Board of Parole Hearings for his initial parole. (Petitioner's minimum

## b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

1 eligible parole date is 1-25-07) for a finding of suitability, and the  
2 setting of his term uniformly. Petitioner submits that the Board of  
3 Parole Hearings (hereafter "Board") regulations, California Code of  
4 regulations, Title 15, section 2402(a) DEMANDS that the Board set a  
5 release date unless Petitioner currently presents an unreasonable risk  
6 of danger to public safety. Petitioner submits that there is nothing  
7 in the Board's decision indicating the basis for that belief, which  
8 Petitioner discusses and proves *infra*.

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10 II

11 On May 1, 2006, the Board conducted petitioner's Initial Parole  
12 Consideration Hearing. The Board found petitioner unsuitable and denied  
13 parole for a period of two years. (Exhibit "A" 89-93) In support of its  
14 findings that petitioner currently posed an unreasonable risk to society,  
15 the Board found that the "offense was carried out in an especially cruel  
16 and callous manner", "carried out in a calculated manner", "The motive  
17 for the crime was very trivial in that it was a gang related shooting",  
18 and the unsupported conclusion that petitioner has refused to take  
19 responsibility for his actions. Petitioner was, however, commended for  
20 programming extremely well, commended for remaining disciplinary free,  
21 obtaining a positive psychological evaluation, participating in AA and  
22 NA, completing two vocations and securing positive parole plan. (Exhibit  
23 "A", p. 89-93). Despite all the evidence supporting a granting of parole,  
24 the Board found petitioner unsuitable for a grant of parole based on  
25 the commitment offense, including and unsupported conclusion that  
26 petitioner tries to minimize his responsibility.

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## III

Petitioner alleges that there was no evidence to support the Board's finding that he poses a current unreasonable risk if released. In fact, all current, reliable evidence presented to the Board shows that petitioner poses no risk if released, Petitioner further alleges that the Parole Board violated petitioner's statutory rights and his Fifth and Fourteenth Amendments (due process rights), when it refused to grant petitioner a parole date despite evidence supporting a finding that petitioner posed no unreasonable risk of harm. Furthermore, his continued confinement constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

## IV

Petitioner also submits the Board spoke in meaningless generalities and never specified the exact nature of Petitioner's current character that would make Petitioner a danger to society. And by not doing so, the Board violated Penal Code §3041, which dictates that the Board shall normally set a parole release date at Petitioner's Initial Hearing. Petitioner, further submits that the issue raised in this Petition are of constitutional dimension, questioning the legality of Petitioner's confinement. An indeterminately sentence prisoner must be paroled when there is no evidence that Petitioner is a current or unreasonable risk to society. The California Supreme Court has recognized that parole applicants' possess a "protected liberty interest under the California Due Process Clause". (In re Rosenkrantz, (2002) 29 Cal.4th 616, 660; cf. McQuillion v. Duncan (9th Cir. 2002) 306 F.3d 895, 901. It is well established that Courts may review the Board's parole decisions under



1 a highly deferential standard of review, and must reverse those decisions  
2 if there is not "some evidence" in the record to support them.  
3 (Rosenkrantz, supra 29 Cal.4th at 667; In re Smith (2003) 109 Cal.App.4th  
4 489. Petitioner submits there is no evidence that Petitioner is currently  
5 a threat to public safety.

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7 PETITIONER NOW SUBMITS THE FOLLOWING POINTS AND AUTHORITIES IN SUPPORT  
8 OF THIS PETITION FOR WRIT OF HABEAS CORPUS

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Under the Board's regulations, pursuant to Penal Code §3041(b), a prisoner may be found unsuitable for parole if the Board determines that the offense or a past offense and its timing is of such gravity that a longer period of incarceration is required in the interest of public safety. The determination is made based on the standards set forth by the Board's regulations. The principle guidelines in making the determination is Cal. Code. Regs. §2401 (c)-(1-6):

(A) Multiple victims were attacked, injured, or killed in the same or separate incidents.

(B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.

(C) The victim was abused, defiled or mutilated during or after the offense.

(D) The offense was carried out in a manner which demonstrated an exceptionally callous disregard for human suffering.

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(E) The motive of the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

Circumstances (1), (2), and (4) reasonably reflect the sole specified and authorized statutory exception to setting parole release dates, for the current or a past convicted offense(s). Factor (E) of Circumstances (1), however, pertaining to the motive of the crime as being inexplicable, although typically stated by the board as a factor for denying parole, is a rare circumstance, as there is almost always, as here, an explanation

as to why the offense occurred. Whether the motive was trivial is another matter. As one court noted:

"The epistemological and ethical problems involved in the ascertainment and evaluation of motive are among the reasons the law has sought to avoid the subject. As one authority has stated, "[hardly any part of penal law is more settled than that motive is irrelevant." (Hall, General Principles of Criminal Law (2d ed. 1960) at p. 88; see also Husak, Motive and Criminal Liability (1989) vol. 8, No. 1, Crim. Justice Ethics 3.)"

The court further explained:

"The offense committed by most prisoners serving life sentences is, of course, murder. Given the high value our society places upon life, there is no motive for unlawfully taking the life of another human being that could not be deemed "trivial". The Legislature has foreclosed that approach, however, by declaring that murderers with life sentences must "normally" be given release dates as they approach their minimum eligible release dates. (Pen. code, §3041, subd. (a))." (In re Scott, 119 Cal.App.4th 871, 892-893.)

It is therefore questionable whether the factor has any evidentiary value in this case. If the motive was indeed inexplicable "A person whose motive for a criminal act can not be

explained or is unintelligible is therefore unusually unpredictable and dangerous." (Id.) Such is not the case here.

The primary circumstance and factors considered to make the determination, §2402(d)(1)(B) and (D), have been explained by the courts. To qualify for the authorized exception, an offense must be exceptionally egregious. The court of appeal characterized this as follows:

"In re Van Houten (2004) 116 Cal.App.4th 339 [10 cal.Rptr.3d 406] illustrates the sort of gratuitous cruelty required. The prisoner in that case was involved in multiple stabbings of a woman with a knife and bayonet, While she was dying, the victim was made aware her husband was suffering a similarly gruesome fate. As stated by the court, "[t]hese acts of cruelty far exceeded the minimum necessary to stab a victim to death." (Id. at p. 351) Other examples of aggravated conduct reflecting an "exceptionally callous disregard for human suffering," are set forth in Board regulations relating to the matrix used to set base terms for life prisoners (§2403, subd. (b)); namely, "torture," as where the "[v]ictim was subjected to the prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death, " and "severe trauma." as where "[d]eath resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a

weapon not resulting in immediate death or actions calculated to induce terror in the victim." (Ibid.) (In re Scott, supra, 119 Cal.App.4th 871, 892.)

In this case there is no evidence of gratuitous cruelty or torture such as described in the foregoing. Moreover, even in such cases, involving those exceptional factors, the Board's regulations and suggested terms indicate parole suitability after serving the indicated base terms.

Circumstances (3) of the unsuitability factors, "Unstable Social History" appears to be related to the commission of violent past offenses and gravity thereof. It is not a factor in this case.

Circumstance (5); "Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense." is not applicable in this case, and the Psychological Report does not indicate any such assessment.

Circumstance (6), "Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail." This should reasonably relate to misconduct like that which may result in rescission proceedings as is enumerated in Cal. Code Regs., tit. 15, §2451, or more properly, be punished by the provisions of Cal. Code Regs., tit. 15, §2410, which provides for "Postconviction Credit", and not used as a substitute for statutory "suitability" provisions which specify only the gravity of the current or a past offense to deny parole.

This "circumstance" is often relied upon by the Board to deny parole to indeterminately sentenced prisoners repeatedly and

for years at a time. Yet, determinately sentenced prisoners might suffer only the loss of a few months of credit, once, for the same misconduct, which they can even get restored. As such, the Board's determinations that rely on such circumstances to deny parole, particularly beyond the indicated matrix base terms, is unauthorized by Penal Code 3041, is unfair, unreasonable and constitutes unequal punishment for the same conduct. A blatant violation of Petitioner's due process rights protected by the 5th & 14th Amendments of the United States Constitution.

RELIANCE ON THE COMMITMENT OFFENSE TO DENY PAROLE AT  
ALL INITIAL HEARINGS AND ALMOST ALL SUBSEQUENT HEARINGS  
IS INCONSISTENT WITH STATUTORY LANGUAGE AND CONTRARY TO  
SUPREME COURT AUTHORITY

The Board's reliance on the commitment offense to deny parole at all initial hearings and almost all subsequent hearings fails to give effect to the statutory minimum terms despite Penal Code §3041 language that parole shall normally be granted at the initial hearing. The Board promulgated regulations pursuant to Penal Code §3041(a) which include standardized gravity matrices, but routinely denies parole for the same circumstances and factors specifying appropriate terms. (See Cal. Code Regs., tit. 15, §2400 et seq., footnotes citing implementation authority.)

Although it is presumed that the Board performs its duties lawfully, it is hardly debatable that the Board does not "normally" set parole release dates, as a matter of policy. And when it does, in about 2% of cases, the Governor reverses most of those, like here. as a matter policy, where there is no substantial evidence to support the decision. See, for example, In re Capistran, (2003) 107 Cal.App.4th 1297, In re Mark Smith, (2003) 109 Cal.App.4th 489; In re Ernest Smith, (2003) 114 Cal.App.4th 343, to name a few published cases. Because of the minimal "evidence" required under the "some evidence" standard, most of the denials and reversals of parole withstand court challenges. release on parole presumed by statutory language gives rise to a substantial right, but has been disregarded. the



great majority of indeterminately sentenced prisoners have been repeatedly denied parole, but would have been released long ago under reasonable administration of the statutes and regulations.

"The Court has an obligation, however, to look beyond the facial validity of a statute that is subject to possible unconstitutional administration since a 'law though 'fair on its face and impartial in appearance' may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings." Minnesota v. Probate Court (1940) 309 U.S. 270, 277.

Although the most recent interpretation of the statute at issue now holds that proportionality or comparison of like offenses is not required, i.e., In re Dannenberg (2005) 34 Cal.4th 1061, the Ninth Circuit has previously stated:

"While the interpretation gloss on the statute may bind this court as a matter of statutory construction, we are not, however, similarly bound as to the constitutional effect of the construction." McSherry, 880 F.2d at 1053" (Aponte v. Gomez, 993 F.2d 705 (9th Cir. 1993) (emphasis added).

This most recent interpretation of the statutes is

inconsistent with decisions and history leading up to the changes in the parole statutes, which prior decisions recognized, as previously discussed:

"In contrast, by altering the statutory scheme and enacting the DSL, the Legislature recited specifically that it "finds and declares that the purpose of imprisonment for crime is punishment." (Pen. Code §1170, subd. (a)(1); all subsequent statutory references are to this code.) The new law provides that an inmate's "release date shall be set in manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the judicial council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and so doing shall consider the number of victims of the crime for which the prisoner is sentenced and other factors in mitigation and aggravation of the crime." (§3041, subd. (a), italics added.) The present parole guidelines were promulgated pursuant to the new act. Thus, the guidelines are not mere administrative responses to the Board's internal shifting discretion but rather reflect basic legislative alterations in the underlying parole scheme. (In re Stanworth (1982) 33 Cal.3d 176, 182.) (Underlining emphasis added.)

Clearly, the interpretation of the law shortly after it was changed was that the Board's discretion was limited by the legislative alterations and guidelines. The changes were clearly intended to place limits on the Board's discretion:

"That, the Montana statute places significant limits on the Board's discretion is further demonstrated by its replacement of an earlier statute which allowed absolute discretion ..." Board of Pardons v. Allen, 482 U.S. 369.

Like with the Montana statute, in California the former Penal Code §3041 was completely changed, mandating the establishment of criteria for the normal setting of parole dates. Furthermore, Penal code §3041(b) clearly spells out why the board may require an extended period of incarceration. Because the Governor is bound by the same standards as the Board, the same would apply to the Governor. The current interpretive gloss on the parole and related statutes reverts plain statutory intent to the previous parole scheme by judicial omission of part of the whole, and violates principles of statutory construction, offending due process and ex post facto law.

THE "SOME EVIDENCE" STANDARD MUST "TEND LOGICALLY", AND BY "REASONABLE INFERENCE" TO ESTABLISH A FACT RELEVANT TO PETITIONER'S SUITABILITY FOR PAROLE.

Petitioner, denies the "some evidence" standard used by the Board satisfied the requirements under both state and federal due process. To satisfy the "some evidence" standard of Judicial Review of the Board's ultimate decision, only a "modicum of evidence is required". *Rosenkrantz*, 29 Cal.4th at 677; *Hill*, supra, 427 U.S. at 456. However, the "some evidence" standard applies to evidentiary sufficiency and is not a substitute for other due process requirements; *Edward v. Balisok*, (1977) 520 U.S. 641, 648, such as the Board's own preponderance of material and relevant evidence. (See Cal.Code of Regulations, tit 15, section 2000 (50)(63)(91). Thus, to determine whether the Board has fulfilled it's minimal due process procedural requirements, a reviewing Court looks not first at the decision, but the process in which it arrived at that decision. *Balisok*, supra, *Ibid*.

Here the Board continues to interpret the "some evidence" standard illegally. The Board's decision in this case failed to point to evidence demonstrating that Petitioner currently presents an unreasonable risk of danger to society - the ultimate question in determining Petitioner's suitability for parole (CCR, Tit. 15, §2403, subd. (a) For this reason, the evidence underlying the Board's decision does not tend logically and by reasonable inference, to establish a fact relevant to the inmate's suitability for parole. (*Morrall*, supra, 102 Cal.App.4th

at pp. 298-299). The discretion of the Board to determine parole suitability, although broad, is not absolute, and the Board's decisions must be supported by "some evidence" (*In re Powell*, (1988) 45 Cal.3d 894, 902-904; see also *Terbune v. Superior Court* (1998) 65 Cal.App.4th 864, 872-873; *In re Minnis* (1972) 7 Cal.3d 639, 646-647).

The United States Supreme Court has made it clear that the "some evidence" standard discussed in *Superintendent v. Hill* (1985) 472 U.S. 445, is only one aspect of judicial review for compliance with minimum standards of due process. The California Legislature has given the Board guidelines to follow in evaluating a parolee's eligibility for parole, mandating that the Board "shall normally" set a parole release date... "in a manner that will provide "uniform terms" for offenses of similar gravity and magnitude in respect to their threat to the public"... (Id., quoting Penal Code §3041, subd. (a).) The Board is required to "establish criteria for the setting of parole release dates." (Ibid.) However, the Board lacks discretion to promulgate regulations that are inconsistent with governing statutes, and the judicial branch has the final word on questions of legal interpretation." (Id., citing *Terbune v. Superior Court*, supra, 65 Cal.App.4th 864, 873)(emphasis added).

Petitioner asserts that the "some evidence" standard is being applied arbitrarily by the reviewing Court's in the State of California. The Courts of California, both State and Federal, seem to have settled in for the "some evidence" standard of Judicial Review. (See, e.g., *McQuillion v Duncan*, 306 F.3d 895 (9th cir. 2002), and in *In re Rosenkrantz*, 29 Cal.4th 616 (2002).

without taking into consideration the "substantial evidence" standard which is required by reviewing courts *Consolidated Edison Co. vs NLRB*, 305 U.S. 197 (1939) (See Page 9)

The "some evidence" standard derives from the United States Supreme Court decision in *Superintendent v. Hill*, 472 U.S. 445; 105 S.Ct. 276 (1985), and is expressly a standard of "Judicial Review" for reviewing Court's, not the Board's Standard

The first California decision applying the "some evidence" standard of *Hill* was in the case of *In re Powell*, 45 Cal.3d 894 (1988). The *Powell* case was one where the Board of Prison Terms rescinded a parole grant based on a psychological report. In his petition, *Powell* argued for the "independent judgment" standard to the facts before the Board, or alternatively, the "substantial evidence" test. The People argued for the deferential "some evidence" test. *Powell* argued for the independent judgment test analogizing habeas corpus proceedings to administrative mandamus proceedings under California Code of Civil Procedure section 1094.5. That code section provides for review of administrative orders or decisions; in some cases it applies the independent judgment test while in other circumstances the substantial evidence test. If the former, and abuse of discretion is established when the Court, exercising its independent judgment determines the administrative findings are not supported by the weight of the evidence. If the latter, the Court must accept all evidence favorable to the Respondent as true and disregard any unfavorable evidence, if the evidence so viewed is sufficient as a matter of law, the order or decision must be affirmed. In rejecting *Powell's* argument, the court held that standard only

applies when an administrative decision affects a vested right. This is a pivotal point. The Powell Court determined that "a prison inmate has no vested right in his prospective liberty on a parole release date". (id. at 903). It cited to pre-1977 cases of *In re Fain*, 65 Cal.App.3d 376 (1976), and to *In re McLain*, 5 Cal.2d 78, 87 (1960), also cited by *Fain*, supra. However, two critical facts were not present at the time of the decision, (1) there was no liberty interest created by pre-1977 section 3041; and (2) the California Supreme Court had not defined post-1977 section 3041, as having vested a liberty interest in a parole release date, as it did later in the *Rosenkrantz* decision 29 Cal.4th 616 (2002), following on the heels of *McQuillion v. Duncan*, 306 F.3d 895, 901-903 (9th cir. 2002), which interpreted Section 3041 as creating an "expectancy of release" that was a cognizable liberty interest protected by federal due process. Thus, the Powell Court was wrong about whether a vested right was involved; and its decision to apply the "some evidence" standard instead of the "independent judgment test" or "substantial evidence" was also wrong because it was based on an incorrect interpretation of law.

Yet, the California Supreme Court in the *Rosenkrantz* case, 29 Cal.4th 616, applied the "some evidence" standard of *Superintendent v. Hill*, 472 U.S. 445 (1985), in such language as to confuse the lower Courts as to its specific purpose. i.e., the standard of judicial review. It carried forward the "some evidence" standard originally applied in *In re Powell*, 45 Cal.3d 894 (1988). The *Rosenkrantz* Court did not make clear that the "some evidence" standard was not a standard applied by the board

itself as a standard of proof in its deliberations. It appears that the omission by the Rosenkrantz Court of any articulation of what the Board's standard of evidence would be as a critical component to the deliberative process of weighing and balancing of evidence, has resulted in the Board not applying their own preponderance of relevant and material evidence standard (CCR, Title 15, Div. 2, Section 2000; (50) Good Cause (63) Material Evidence (91) Relevant Evidence), thereby rendering every decision to grant or deny parole completely standardless, and thus arbitrary and capricious.

Typically in California, the judicial standard of review of the ultimate decision of the Board of Parole Hearings denying parole to a prisoner has been the "some evidence" standard. In *re Dannenberg* (2005) 34 Cal.4th 1061; In *re Ramirez* (2001) 94 Cal.App.4th 549, 564; In *re Rosenkrantz*, [*Rosenkrantz V*] (2002) 29 Cal.4th 565, 616. Although both *Rosenkrantz* and *Dannenberg* thus affirmed the importance of judicial review of the board decisions, the decision's provide less than clear guidance as to the proper application of the "some evidence" standard articulated in both decisions. Of particular concern is the *Dannenberg* Court's brief discussion in dicta of the "commitment offense" factor, which can improperly be read as granting to the Board the ability to deny parole on the basis of almost any fact imaginable. As a result, there is a real risk the State will interpret the standard to assert, de facto, the power it has been expressly denied; effective immunity from meaningful judicial review of parole decision. It should be recognized, however, that



several courts are struggling to determine exactly how this standard applies. While other Court's (post Dannenberg & Rosenkratz) has held that the "some evidence" standard must apply to current dangerousness. While interpreting this standard the California Court of Appeals, Second Appellate District in the case of *In re WEN LEE*, (Oct. 17, 2006, B188831)(2006 DJDAR 13961) the Court held;

...We conclude, however, that the governor erred. The test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. (Cal.Code Regs., tit. 15, §2402, subd. (a) [parole denied if prisoner "will pose an unreasonable risk of danger to society if released from prison"]; see *In re Scott* (2005) 133 Cal.App.4th 573, 595 ["The commitment offense can negate suitability [for parole] only if circumstances of the crime ... rationally indicate that the offender will present an unreasonable public safety risk if released from prison"] but see *In re Lowe* (2005) 130 Cal.App.4th 1405 [suggested "some evidence" applies to the factors, not dangerousness]. Some evidence of the existence of a particular factor does not necessarily equate to some evidence the parolee's release unreasonably endangers public safety.

In the case of *In re Elkins*, (Oct. 31, 2006, A111925) the

Court of Appeals, First Appellate District, held that;

..."The 'some evidence' standard is extremely deferential and reasonably cannot be compared to the standard of review involved in ... considering whether substantial evidence supports the findings" , nevertheless, it requires" ' "some indicia of reliability" ' " (Scott II, supra, 133 Cal.App.4th at p. 591, quoting Biggs v. Terbune, (9th Cir. 2003) 334 F.3d 910, 915) and "may be understood as meaning that suitability determinations must have some rational basis in fact" (Scott II, at p. 590, fn. 6).

One thing is for certain, even if a mere "some evidence" standard is to apply in this review, that standard is only a vehicle for the Court's review of the Board's decision, not a standard for the Board itself to apply. The findings to support that initial decision by the Board to deny parole, however, must be that the record indicates the Petitioner, poses a "current" danger to the public. That finding can not be based on such flimsy evidence as to render it mere whim or caprice. (See In re Ramirez, supra, at 564; See also In re Powell, (1988). To the contrary, as set forth herein, the Board's decision must be made under the preponderance of evidence standard. (Cal.Code of Reg., Title 15, Div. 2, section 2000 (50) Good Cause).

Petitioner denies the "some evidence" standard used By the Board satisfied the requirements under both state and federal due

process. Petitioner asserts reliance on the Commitment offense does not satisfy the "some evidence" standard. There is no question that under *Rosenkrantz* and *Dannenberg* the statutory "commitment offense" factor is relevant, and that it may at times be enough to deny parole on its own, neither *Rosenkrantz* nor *Dannenberg* stands for the principle that the commitment offense is always enough by itself. In fact, both cases affirmatively state that reliance on the commitment offense alone might, in some circumstances, rise to the level of a due process violation. That conclusion is consistent with the concern raised by the Ninth Circuit in *Biggs v. Terbune*, that the reliance on an ever-frozen, unchanging factor - such as the commitment offense - in denying parole may in certain instances violate due process. This point was also addressed in the case of *In re Ramirez*, 94 Cal.App.4th 549, at 571 (2001), when the Court noted that reliance on the crime after 17 years in prison was arbitrary. Petitioner has been incarcerated 17 years. While the proportionality aspects of the *Ramirez* decision were disapproved by the California Supreme court decision in *In re Danneneberg*, the entirety of *Ramirez* decision, including this aspect, was not disapproved. Therefore, the Board's reliance on the commitment offense violates due process. The predictive value of the crime after 17 years of incarceration is zero. Furthermore, in the case of *In re Scott*, 34 Cal.Rptr.3d 905 (Cal.App.1 Dist. 2005), the Court clearly reaffirmed the rationale of the *Ramirez* Court when it declared "...Parole is the rule rather than the exception"... Thus, the California Board of Parole Hearings continuous use of the "some evidence" standard as their proper

standard of review is inappropriate, thus, illegal. Furthermore, reviewing Courts using the "some evidence" standard violates principles of appellate review. Substantial evidence is the standard required for a reviewing Court. *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197 (1939). It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Chrysler v. U.S. Environment Protection Agency, C.A.*, 631 F.2d 865, 890. Under a proper analysis, the "substantial evidence" test, and not a "some evidence" review is the appropriate standard.

ALL RELEVANT AND RELIABLE POST-CONVICTION EVIDENCE  
MUST BE GIVEN THE REQUIRED CONSIDERATION IN FAVOR  
OF PETITIONER IN LIGHT OF THE EVIDENCE PRESENTED

Petitioner submits that the Board bases its reasons for Petitioner's continued incarceration on historical facts that can never change, thus ignoring the uncontradicted evidence of Petitioner's rehabilitation. Petitioner has achieved the very goal that is hailed by our judicial and correctional systems, coming to prison, turning his life around and committing himself wholeheartedly to bettering himself and the world around him. Petitioner asserts there is no evidence that Petitioner is currently a threat to public safety. At Petitioner's hearing the Board denied Petitioner parole using static factors, despite overwhelming evidence showing Petitioner's rehabilitation. Petitioner asserts he has taken every available step to improve his life, pay his debt to society, and prepare himself for eventual release, as it is required under penal code §3041 for eligible prisoners serving indeterminate sentences. The Board's reliance on the Commitment Offense as satisfying the "some evidence" standard of review is without merit, after removing the facts erroneously relied upon, relied exclusively upon the Commitment Offense and failed to weigh and consider Petitioner's remorse,, positive psychological profile, lack of future dangerousness, and both realistic and positive parole plans including housing, education, and employment. The Board is required to consider all relevant information about a prisoner, not simply his commitment offense. His "risk of danger to society

is to be assessed in light of all relevant information available to the panel. (Cal. Code Regs., tit. 15, §2402(b)).

Under the view of the California parole process, it is clear that the nature of the commitment offense can constitute a basis for denial only to the extent it sheds light on whether a prisoner "now poses a risk of danger to society". Relying on the offense after years in custody and clear evidence of rehabilitation becomes arbitrary. At some point along the parole consideration process, that excuse to refuse to set a parole date enlght of exemplary conduct and behavior becomes arbitrary, and the term, although initially valid, becomes disproportionate and therefore unlawful. As time passes, and as the appropriate uniform term for the offense approaches, the offense itself sheds less and less light on how a prisoner will behave on the outside. His record in prison, his mental health, his conduct and achievements, all shed more light on his readiness to rejoin society. (see *Deluna*, supra 2005 WL 268045, 6) a defendant's postcommitment institutional behavior is relevant to his suitability for parole [citing §2402, subd. (d)(9)], and has both positive and realistic parole plans (see *In re Deluna*, supra, 2005 WL 268045, 5- Stable Relationships with others favor parole (15 CCR §2402 subd. (d)(9), All these factors favor his release. There is no evidence Petitioner now poses a risk of danger to society.

The Board's reasons finding petitioner unsuitable is unreasonable and an abuse of discretion enlght of the evidence presented to the Board by petitioner and the Department of Corrections and Rehabilitation Psychological Department and Counselor.

At the hearing, Correctional Counselor I, T. Verdasoto testified as to Petitioner's programming, and his future residence and employment when paroled:

Therapy and Self-Help Activities: Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir.

Postconviction Factors: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/22/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While in Calipatria, he worked in the culinary, pre-voc. and Compute Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Meddium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification,

Close B was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

Disciplinary History: Plaza has remained disciplinary free throughout his incarceration

Residence: Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr., Simi Valley, California 93063. His phone number is (805) 581-6323

Employment: Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone (805) 578-7303.

Assessment: In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing. (see Exhibit "B")

Dr. M. Macomber testified as to Petitioner's his current mental stability and his lack of present and future dangerous:

Psychiatric and Medical History: There is no



psychiatric history. There is no history of serious accidents or head injuries or seizures. His health is good.

Current Mental Status/Treatment Needs: Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts Degree. His grades are very good. Also, he has obtained a certificate as a home inspector from professional career institute in Georgia by correspondence. In addition, he has completed several courses toward self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job

success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

Current Diagnostic Impression: Axis I- Drug and alcohol use by history; Axis II- No personality disorder; Axis III- No physical disorder; Axis IV- Life term incarceration; Axis V- Current GAF: 95.

Assessment of Dangerousness: (A) In considering potential for dangerous behavior in the institution. Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time in prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it

was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

(B) In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

(C) At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this no longer is an issue. Therefore, there are no significant risk factors in this case.

Clinician Observation/Comments/Reccomendations: There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon release. He has very strong family support in the community. All these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All these factors indicate that his prognosis for successful adjustment in the community is excellent. (see Exhibit "C")

Petitioner asserts that the rehabilitative evidence submitted by Petitioner and both the life Evaluation report and Psychological report is supportive of release contrary to the Board's specious findings. the Biggs court addressed the Boards illegal usage of needed therapy and other illegal reasons to justify a highly illegal denial.

"The record in this case and the transcripts of Biggs hearing before the Board clearly show that many conclusions and factors relied on by the Board were devoid of evidentiary basis".

Petitioner submits that the record in this case is also devoid of evidentiary basis as to the Board's findings that evidence presented is not supportive of release, which violates due process. Petitioner further submits that despite the overwhelming evidence that Petitioner does not present a current risk to public safety. The Board arbitrarily found petitioner unsuitable for release. Petitioner asserts that the real reason given by the Board indicative of unsuitability is the commitment offense, and if allowed to identify the unchanging circumstances as indicative of unsuitability, this would put Petitioner in an impossible situation, where no matter what he shows in terms of positive behavior, reformation, self-help, work skills, parole plans, on just rehabilitation in general, he would never be able to overcome the unchanging facts of the crime. The only logical application of constitutional due process dictates what the Court in *Irons v. Warden*, 358 F.supp.2d 936, 947, (E.D.Cal. 2005) held,

,i.e., that any denial requires the presence of some in-prison behavior showing that the inmate **currently** presents an unreasonable risk of danger if paroled.

Here the facts of the crime have been the only real reason for denying parole. yet, those facts have never been tied to **current** behavior showing that Petitioner still presents an unreasonable risk at this time. A rule requiring the presence of in-prison adverse behavior to justify a denial based on the crime simply recognizes what the 9th Circuit in Biggs alluded to when it talked of the rehabilitative goals of the system, and the need to take into consideration that a person can rehabilitate themselves. This seems to be missing from the Board's current agenda and policy. This denies to Petitioner the process to which he is constitutionally due.

At this point, Petitioner has been incarcerated over 23 years (including pre- & post-conviction credit). His programming clearly shows his full rehabilitation. In drawing the line as to when a denial becomes arbitrary, that line has definitely been crossed in this case, as the Board cannot present factual findings showing a continued risk of danger based on the rehabilitative evidence presented. To the contrary, the in-prison facts are exclusively positive.

As Ramirez noted (Ramirez, 94 Cal.App.4th at 549), the paroling authority must do more than merely commend Petitioner for the hard work done to rehabilitate himself while in prison. They must actually consider these factors "as... circumstance[s] tending to show his suitability for parole." Ramirez supra 94 Cal.App.4th at 571-72 [emphasis in original]. Of course, all the

Board did with petitioner's extensive accomplishments was to brush them aside with several terse lines and issue superficial compliments. Obviously, no serious consideration was ever given to Petitioner's outstanding programming. Yet, the Biggs rule is clear that if an inmate "continue[s] to demonstrate exemplary behavior and evidence of rehabilitation; denying him a parole date simply because of the nature of [his] offense and prior conduct would raise serious questions involving his liberty interest in parole". *Biggs v. Terbune*, supra, 334 F.3d at 916. Here, the evidence of actual rehabilitation is beyond dispute.

The Boards inability to find anything in his current programming, demeanor or psychological condition to justify a finding of current dangerousness, the Board continuously falls back on the immutable and unchanging facts, of the crime, to base its findings of unsuitability.

Again as noted above, wherever one draws the line as to when the reliance on the unchanging facts of the commitment offense becomes a violation of due process in the abstract, under the facts here after 17 years, it clearly has passed here. Thus, the Board must do more than simply commend Petitioner for his efforts and accomplishments, and must consider them as favoring parole in evaluating suitability. *Ramirez*, supra, at 572. The Board must do this even if the factors of the commitment offense in the abstract can be said to be sufficient to deny petitioner parole.

Petitioner asserts that he has continued to be a model inmate, yet, continues to be deprived the benefits of his exemplary rehabilitation by the California Board of Parole

Hearings. The only real issue at a parole hearing is whether the inmate currently poses an unreasonable risk of danger to the public if paroled. This must be determined by an inmates post-conviction evidence of rehabilitation. Petitioner has met every prerequisites condition that warrants a finding of suitability. Because there is no evidence to support a finding that Petitioner poses a current threat to public safety of any magnitude, let alone an unreasonable level of threat, the decision denying parole cannot be sustained.



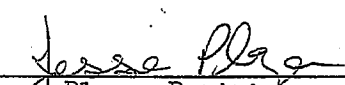
1 CONCLUSION

2 For these reasons, Petitioner respectfully submits that this Court  
3 grant review to determine that his due process rights continues to be  
4 abridged by the California Board of Parole Hearings and upheld by the  
5 unreasonable application of clearly established Supreme Court Authority  
6 and decision contrary to clearly established law standards of review under  
7 the Anti-Effective Death Penalty Act of 1996.

8 The granting of review will bring up to date the guidance provided,  
9 in Bigg, Ramirez and all other foermentioned cases presented, so as to  
10 insure uniformity of decision making in the lower courts on issues  
11 frequently litigated, and to settle questions so important that they impact  
12 directly upon the rights of a person such as Petitioner to due process  
13 of law under the State and Federal Constitutions.

14  
15  
16 Dated: Nov. 19, 2007

17  
18 Respectfully submitted,

19  
20   
Jesse Plaza, Petitioner

21 In Pro Per  
22

23 //

24 //

25 //

26 //

27 //

28 //

**PROOF OF SERVICE BY MAIL**  
**BY PERSON IN STATE CUSTODY**  
(C.C.P. §§ 1013(A), 2015,5)

I, Jesse Plaza, declare:  
I am over 18 years of age and I am party to this action. I am a  
resident of CORRECTIONAL TRAINING FACILITY prison, in the County  
of Monterrey, State of California. My prison address is:

Jesse Plaza, CDCR #: H-12371  
CORRECTIONAL TRAINING FACILITY  
P.O. BOX 689, CELL #: F-328U  
SOLEDAD, CA 93960-0689.

On \_\_\_\_\_, I served the attached:

---

Petition for Review

---

on the parties herein by placing true and correct copies  
thereof, enclosed in a sealed envelope (verified by prison  
staff), with postage thereon fully paid, in the United States  
Mail in a deposit box so provided at the above-named institution  
in which I am presently confined. The envelope was addressed as  
follows:

SUPREME COURT OF CALIFORNIA  
350 McAllister Street  
San Francisco, CA 94102-4797

OFFICE OF THE ATTORNEY GENERAL  
300 S. Spring Street  
Los Angeles, CA 90099-9126

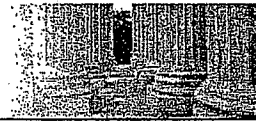
I declare under penalty of perjury under the laws of the  
State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_.

\_\_\_\_\_  
Declarant

**CALIFORNIA APPELLATE COURTS**

Case Information

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Division 2****Case Number B202665**

<b>Description:</b>	Petition summarily denied by order
<b>Date:</b>	11/08/2007
<b>Status:</b>	Final B-A-C
<b>Publication Status:</b>	
<b>Author:</b>	
<b>Participants:</b>	
<b>Case Citation:</b>	

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S 158421

EXHIBIT A

INITIAL PAROLE CONSIDERATION HEARING  
STATE OF CALIFORNIA  
BOARD OF PAROLE HEARINGS

In the matter of the Life )  
Term Parole Consideration )  
Hearing of: )

CDC Number H-12371

JESUS PLAZA )  
\_\_\_\_\_) )  
\_\_\_\_\_)

**INMATE  
COPY**

CORRECTIONAL TRAINING FACILITY  
SOLEDAD, CALIFORNIA  
MAY 1, 2006

PANEL PRESENT:

ARCHIE JOE BIGGERS, Presiding Commissioner  
ROLANDO MEJIA, Deputy Commissioner

OTHERS PRESENT:

JESUS PLAZA, Inmate  
LAWRENCE MORRISON, Deputy District Attorney  
KATERA E. RUTLEDGE, Attorney for Inmate

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Ruby M. Dougherty, Peters Shorthand Reporting

ii

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--oOo--

1

P R O C E E D I N G S

1

2

DEPUTY COMMISSIONER MEJIA: We're on

3

record.

4

PRESIDING COMMISSIONER BIGGERS: Okay.

5

This is initial parole consideration hearing for

6

Jesus Plaza, P-L-A-Z-A, CDC No. H-12371. We're

7

located at the Correctional Training Facility in

8

Soledad. Inmate was received on October 9, 1991

9

from Los Angeles County. The life term began on

10

October 9, 1991 and the minimum eligible parole

11

date is January 25th, 2007. The controlling

12

offense for which the inmate has been committed

13

is murder case number -- first-degree murder

14

with a weapon. Case No. is VA004108. That's a

15

violation on criminal code PC187. The inmate

16

received a term of 25 years to life, with a

17

minimum eligible parole date of 1/25/07. Now

18

this hearing's being tape-recorded and for the

19

purpose of voice-identification each of us will

20

state our first and last name, spelling our last

21

name. When we get to you Mr. Plaza, if you

22

would please give us your CDC number after you

23

spell your last name. I will start and move to

24

my left. My name is Archie Joe Biggers,

25

B-I-G-G-E-R-S, and I'm a Commissioner.

26

DEPUTY COMMISSIONER MEJIA: Rolando

27

Mejia, M-E-J-I-A, Deputy Commissioner.

2

1 DEPUTY DISTRICT ATTORNEY MORRISON:

2 Lawrence Morrison, M-O-R-R-I-S-O-N, Los Angeles  
3 District Attorney.

4 ATTORNEY RUTLEDGE: Katera E. Rutledge,  
5 R-U-T-L-E-D-G-E, attorney for Mr. Plaza.

6 INMATE PLAZA: My name is Jesus Plaza,  
7 last -- CDC number is H-12371.

8 [Recording equipment malfunction, placement of  
9 equipment, background noise, and volume of  
10 participants resulted in indiscernible content.]

11 PRESIDING COMMISSIONER BIGGERS: Okay.  
12 Thanks to all of you. Mr. Perez is there an ADA  
13 statement that was passed over there to you? Do  
14 you see that? It should have been right next  
15 to--

16 INMATE PLAZA: (Indiscernible).

17 PRESIDING COMMISSIONER BIGGERS: -- would  
18 you please read that out loud for us?

19 INMATE PLAZA: "The Americans with  
20 Disability Act, ADA, is a law to  
21 help people with disabilities.  
22 Disabilities are problems that  
23 make it harder for some people to  
24 see, hear, breathe, talk, walk,  
25 learn, think, work, or take care  
26 of themselves than it is for  
27 others. Nobody can be kept out of



1 public places or activities  
2 because of a disability. If you  
3 have a disability you have the  
4 right to ask for help to get ready  
5 for your BPT hearing, get to the  
6 hearing, talk, read forms and  
7 papers, and understand the hearing  
8 process. BPT will look at what  
9 you ask for to make sure that you  
10 have a disability that is covered  
11 by the ADA, and that you have  
12 asked for the right kind of help.  
13 If you do not get help or if you  
14 don't think you got the kind of  
15 help you need, ask for a BPT 1074  
16 Grievance Form. You can also get  
17 help to fill it out."

18 PRESIDING COMMISSIONER BIGGERS: All  
19 right. Do you understand what that means Mr.  
20 Plaza?

21 INMATE PLAZA: Yes, I do.

22 PRESIDING COMMISSIONER BIGGERS: And what  
23 does it mean in your own words please.

24 INMATE PLAZA: In my own words I believe  
25 it's saying if I have any disability or need  
26 help during this hearing I have the right to  
27 have those provided for me.

4

1           PRESIDING COMMISSIONER BIGGERS:

2   (Indiscernible) we're talking about things like  
3   hearing, eye -- do you wear glasses?

4           INMATE PLAZA: No.

5           PRESIDING COMMISSIONER BIGGERS: Okay.

6   Do you have any hearing impairment?

7           INMATE PLAZA: No, I don't.

8           PRESIDING COMMISSIONER BIGGERS: And you  
9   can walk without any problems?

10          INMATE PLAZA: Yes.

11          PRESIDING COMMISSIONER BIGGERS: Okay.

12   Have you ever been included in the Triple CMS or  
13   EOP Program?

14          INMATE PLAZA: Never.

15          PRESIDING COMMISSIONER BIGGERS: Okay.

16   So you don't suffer from any disability that  
17   would prevent you from participating in today's  
18   hearing?

19          INMATE PLAZA: Not at all.

20          PRESIDING COMMISSIONER BIGGERS: Counsel,  
21   do you feel that your client's ADA rights have  
22   been met? Ms. Rutledge?

23          ATTORNEY RUTLEDGE: Yes, Sir.

24          PRESIDING COMMISSIONER BIGGERS: Thank  
25   you. This hearing is being conducted pursuant  
26   to Penal Code Section 3041 and 3042 and the  
27   rules and regulations of the Board of Prison

1 Terms governing parole consideration hearings  
2 for life inmates. The purpose of today's  
3 hearing is to consider the number and the nature  
4 of the crimes you were committed for, your prior  
5 criminal and social history, your behavior and  
6 programming since your commitment. We have had  
7 the opportunity to review your Central File, and  
8 you will be given the opportunity to correct or  
9 clarify the record. We will reach a decision  
10 today, and find -- and inform you whether or not  
11 we find you suitable for parole and the reasons  
12 for our decision. If you are found suitable for  
13 parole, the length of your confinement will be  
14 explained to you. Before we go any further, I  
15 want to advise you that we expect you to be  
16 fully honest with us today, especially with this  
17 being your initial hearing. So in the event  
18 that you don't get a date today, this here will  
19 form the foundation for all future hearings.

20 INMATE PLAZA: I (indiscernible).

21 PRESIDING COMMISSIONER BIGGERS: Any  
22 false statement you make today could have an  
23 adverse effect on your ability to get a date at  
24 a later time in the event that you don't get a  
25 date today. Nothing that happens here today  
26 will change the findings of the Court. We are  
27 not here to retry your case. We are here to

1 determine if you are suitable for parole. Do  
2 you understand that?

3 INMATE PLAZA: I understand.

4 PRESIDING COMMISSIONER BIGGERS: The  
5 hearing will be conducted in two phases. I will  
6 discuss with you the crime you were committed  
7 for, your prior criminal and social history.  
8 Deputy Commissioner Mejia will talk to you  
9 about parole plans, letters of support and  
10 opposition, your counselor's report and your  
11 psychological evaluation. Once that is  
12 concluded, both Commissioners, the District  
13 Attorney, and your attorney will ask you  
14 questions. Questions from the District Attorney  
15 shall be asked through the Panel and your  
16 answers should be directed to the Panel. Before  
17 we recess for deliberation, the District  
18 Attorney, your attorney, and you will be given  
19 the opportunity to make a final statement  
20 regarding your suitability, followed by  
21 statements -- if we had victims, it would be --  
22 (indiscernible) follow with the victims, but  
23 since we don't have any we don't worry about  
24 that one. California Code of Regulations states  
25 that regardless of time served a life inmate  
26 shall be found unsuitable for and denied parole  
27 if in the judgment of the Panel the inmate would

7

1 pose an unreasonable risk of danger to society  
2 if released from prison. You have certain  
3 rights. Those rights include the right to a  
4 timely notice of this hearing, the right to  
5 review your Central File. Did you review your  
6 Central File?

7 INMATE PLAZA: Yes.

8 PRESIDING COMMISSIONER BIGGERS: And the  
9 right to present relevant documents. Ms.  
10 Rutledge, do you believe that your client's  
11 rights have been met.

12 ATTORNEY RUTLEDGE: Yes.

13 PRESIDING COMMISSIONER BIGGERS: Okay.  
14 Thank you, ma'am. You have an additional right  
15 to be heard by an impartial Panel. Do you have  
16 any objection to the Panel members?

17 INMATE PLAZA: No, none at all.

18 PRESIDING COMMISSIONER BIGGERS: Okay.  
19 All right. I'm going to ask Ms. Rutledge, do  
20 you have any objections to the Panel  
21 (indiscernible)?

22 ATTORNEY RUTLEDGE: No, Sir.

23 PRESIDING COMMISSIONER BIGGERS: Thank  
24 you. You will receive a written copy of our  
25 tentative decision today. That decision becomes  
26 effective within 120 days. A copy of the  
27 decision and a copy of the transcript will be

8

1 sent to you, and you will have 90 days from that  
2 date to appeal if you so desire. Now, I need to  
3 let you know that the Board has eliminated its  
4 appeals process. If you disagree with anything  
5 that happens in today's hearing, you have the  
6 right to go directly to the Court with your  
7 complaint.

8 INMATE PLAZA: I understand.

9 PRESIDING COMMISSIONER BIGGERS: Okay,  
10 thank you. You are not required to admit your  
11 offense or discuss your offense. However, this  
12 Panel does accept the findings of the Court to  
13 be true. Do you understand that?

14 INMATE PLAZA: Yes, I (indiscernible).

15 PRESIDING COMMISSIONER BIGGERS: Okay,  
16 thank you. I'm gonna pass a -- over to your  
17 attorney and then to the District Attorney what  
18 I've have marked as Exhibit One so that we can  
19 make sure that we're all using -- on the same  
20 set of documents.

21 DEPUTY DISTRICT ATTORNEY MORRISON:

22 District Attorney has all the documents, thank  
23 you.

24 ATTORNEY RUTLEDGE: The -- Mr. Plaza, the  
25 defense has all (indiscernible).

26 PRESIDING COMMISSIONER BIGGERS: Thank  
27 you, ma'am. Thank you, sir. Commissioner

1 Mejia, is there any confidential material in the  
2 file?

3 DEPUTY COMMISSIONER MEJIA: No. No  
4 confidential information.

5 PRESIDING COMMISSIONER BIGGERS: Okay.  
6 Are any additional documents to be submitted?

7 ATTORNEY RUTLEDGE: I (indiscernible) we  
8 did submit --

9 PRESIDING COMMISSIONER BIGGERS: And I  
10 read those (indiscernible) read the statement  
11 into the record, because I want to make sure it  
12 he gets into the record. I read, I think it was  
13 the last two pages that had to do with matrix  
14 and all the other stuff in there -- but I -- and  
15 I -- but want to get it on record, so -- to  
16 make sure that it is in the transcript.

17 ATTORNEY RUTLEDGE: Do you want me to  
18 read it or him to do that?

19 PRESIDING COMMISSIONER BIGGERS: It  
20 doesn't matter, which ever you prefer.

21 ATTORNEY RUTLEDGE: This was taken from  
22 -- Mr. Plaza had submitted to the Board a  
23 memorandum of evidence and law in support of  
24 parole suitability and this is directed to the  
25 Board.

26 "Introduction, the California Code  
27 of Regulations Title XV Division

10

1 Two hereafter XV Section 2245,  
2 states in part, 'The prisoner is  
3 responsible for bringing to the  
4 attention of the hearing Panel any  
5 issues pertaining to his rights  
6 under this article or any failure  
7 to comply with these rules. A  
8 prison may waive any of these  
9 rights. Any such waiver shall be  
10 documented.' I wish to bring to  
11 the attention of this Panel at  
12 this time that I do have the right  
13 to present this document at this  
14 hearing to have it entered into  
15 the record. Moreover, the Panel  
16 must --"  
17 That's moot since the Panel's accepting it. Is  
18 that correct?

19 DEPUTY COMMISSIONER MEJIA: Yes, it is.

20 ATTORNEY RUTLEDGE: Okay. In the third  
21 paragraph, my client submits this memorandum  
22 because he does not wish to intentionally or  
23 unintentionally waive any of his rights under  
24 the law, and that he wants that all evidence in  
25 support of finding suitability be stated for the  
26 records and for purposes of appeal if necessary.

27 PRESIDING COMMISSIONER BIGGERS: Before



11

1 you go any further. Normally, everything that  
2 we do, that's why it's on record. So, I just  
3 want to make sure that you now understand that  
4 we -- our job is to make sure that we do  
5 everything under due process and we are aware of  
6 everything that happens in Title XV.

7 INMATE PLAZA: That's right.

8 PRESIDING COMMISSIONER BIGGERS: Okay?

9 So, go ahead, ma'am, please.

10 ATTORNEY RUTLEDGE: Moving on to the  
11 memorandum incorporates the following -- relies  
12 upon the Court rulings.

13 "InRe Rosencrance,  
14 (indiscernible); InRe Rosencrance  
15 for LA County Superior Court, Case  
16 No. AH10298; InRe Caswald,  
17 210DJDJR10845; InRe McWillion,  
18 U.S. Court of Appeals for the 9th  
19 Circuit, Case No. 0055182; InRe  
20 Ramirez, 9th Circuit Court of  
21 Appeals, Case No. A0092699; InRe  
22 Biggs, U. S. Court of Appeals,  
23 Case No. VH002016; InRe Deluna,  
24 126 Appellate Court, 585; InRe  
25 Low, 130 Appellate Court, 1418 --"

26 PRESIDING COMMISSIONER BIGGERS: Excuse  
27 me, what was that? What was the -- what's the

12

1 relation of the Low case in this hearing?

2 ATTORNEY RUTLEDGE: How are we applying  
3 the Low case to this hearing? This is being  
4 presented by my client; I have not read the Low  
5 case.

6 DEPUTY DISTRICT ATTORNEY MORRISON: Well,  
7 I have a -- I have a question (indiscernible) if  
8 I may. The inmate can present anything he  
9 wants, but this sounds like legal arguments.  
10 The inmate has an attorney -- he's gonna have an  
11 attorney -- he can make whatever arguments he  
12 wants if he gonna represent himself then he can  
13 make legal arguments. But he doesn't get to  
14 make legal arguments and have an attorney.

15 ATTORNEY RUTLEDGE: Yes, he does.  
16 There's nothing -- sometimes he can have an  
17 attorney --

18 PRESIDING COMMISSIONER BIGGERS: Excuse  
19 me. What I'm doing right now is allowing him to  
20 read his document into the file. When we start  
21 talking about the opposing statements and  
22 getting into all the others, then that's when I  
23 will put a stop to that. But I want to get this  
24 in the file, and I have something to say once  
25 you finish.

26 ATTORNEY RUTLEDGE: And I would -- I  
27 would remind the Panel that under Title XV the

13

1 people have no standing to object to anything  
2 that the inmate does.

3 PRESIDING COMMISSIONER BIGGERS: Exactly.

4 ATTORNEY RUTLEDGE: Thank you. All  
5 right. So -- "InRe Shapudis, 135 Appellate  
6 Forth 217 at 227; Irons versus Carey 408 F  
7 Third, 1165 9th Circuit." Now Page Two goes to  
8 the commitment offense so --

9 PRESIDING COMMISSIONER BIGGERS: You can  
10 skip that one. In fact, I think you can skip  
11 the last three pages, I just wanted to get those  
12 things on the record for you (indiscernible)  
13 others because what I wanted to let you know sir  
14 is that those cases are a matter of law, and you  
15 can use those any times when you appeal if for  
16 some reason you don't get a date. But there are  
17 a couple that you forgot to mention. One of  
18 those is Dannenberg, and we'll talk about that a  
19 little later on. I would appreciate -- I think  
20 you've done a superb job of putting this package  
21 together. My only comment on that is I think  
22 sometimes that you don't who -- by going in  
23 there and doing certain things, there's a  
24 difference between shall, will, and can't.

25 INMATE PLAZA: I understand.

26 PRESIDING COMMISSIONER BIGGERS: Okay.

27 So. All right.

14

1           ATTORNEY RUTLEDGE: Can I -- there's an  
2 -- I still have to lodge a couple of objections  
3 whenever the Panels --

4           PRESIDING COMMISSIONER BIGGERS: No  
5 problem. So those are the additional documents.  
6 Now, you say you have some preliminary  
7 objections? What are they now?

8           ATTORNEY RUTLEDGE: Well, our first  
9 objection would be -- well, we would ask that  
10 the Panel -- under 2236 my client will be  
11 discussing everything but the commitment offense  
12 with the Panel. We ask that the people not be  
13 allowed to refer to him not discussing the case,  
14 and that again we're just reiterating that the  
15 people don't have standing to object to any of  
16 our statements and may not advise the Panel on  
17 the law, and that would be all aside from what  
18 would be in the package.

19           DEPUTY DISTRICT ATTORNEY MORRISON:  
20 (Indiscernible) recommend that (indiscernible)  
21 represents the citizen of Los Angeles, it's part  
22 of public comment that we're entitled to make on  
23 any subject regarding suitability for parole.

24           ATTORNEY RUTLEDGE: You can during your  
25 closing. Other than that you have no standing.

26           PRESIDING COMMISSIONER BIGGERS: She's  
27 right about that. You do have the right to do

15

1 that in Closing Statements (indiscernible). He  
2 can in fact though ask questions. If your  
3 client elects not to answer them that's  
4 something entirely different, but he does have  
5 the right to ask questions as well.

6 ATTORNEY RUTLEDGE: Of my client,  
7 correct. Yes. Okay.

8 PRESIDING COMMISSIONER BIGGERS: Are  
9 there any other preliminary objections?

10 ATTORNEY RUTLEDGE: No, Sir.

11 PRESIDING COMMISSIONER BIGGERS: Okay. I  
12 assume from what you just told me that the  
13 inmate will be speaking to us about everything  
14 but the crime?

15 ATTORNEY RUTLEDGE: Yes.

16 PRESIDING COMMISSIONER BIGGERS: Okay.  
17 Would you raise your right hand please, Mr.  
18 Plaza. Do you solemnly swear or affirm that the  
19 testimony you give at this hearing will be the  
20 truth and nothing but the truth?

21 INMATE PLAZA: I do.

22 PRESIDING COMMISSIONER BIGGERS: Thank  
23 you. I'm gonna read into the record from the  
24 Appellate decision the facts of the committing  
25 offense.

26 "On May 26, 1990, Mr. Plaza was an  
27 active member of the King Cobra

16

1 juvenile gang. (Indiscernible)  
2 Silva, S-I-L-V-A, Mr. Plaza's  
3 co-arrestee was also an active  
4 member of the King Cobras.  
5 Patrick Littlebull,  
6 L-I-T-T-L-E-B-U-L-L, the victim,  
7 was a member of the Bell Garden  
8 (phonetic) --" is that local --  
9 INMATE PLAZA: It's always been  
10 miss-spelled, but it's supposed to be locos as  
11 in crazy.  
12 PRESIDING COMMISSIONER BIGGERS: Locos.  
13 INMATE PLAZA: Locos.  
14 PRESIDING COMMISSIONER BIGGERS: Locos.  
15 INMATE PLAZA: Yeah.  
16 PRESIDING COMMISSIONER BIGGERS: Okay.  
17 "-- a rival juvenile gang. Fifty-nine hundred  
18 block of Loveless (phonetic) Street was a known  
19 hangout of the Bell Garden Locos."  
20 INMATE PLAZA: There you go.  
21 PRESIDING COMMISSIONER BIGGERS: "On May  
22 26, 1990 at around 10:00 p.m.  
23 Rosario Quevedo, Q-U-E-V-E-D-O,  
24 and her sister, Martha -- and I'll  
25 spell the last name --  
26 P-A-L-A-C-I-O-S, returned from  
27 church with their children and

17

1 parked their car in front of their  
2 apartment at 5940 Loveless Street.  
3 Quevedo, Q-U-E-V-E-D-O; noticed  
4 some individuals standing and  
5 talking to each other on the  
6 sidewalk in front of the car.. She  
7 also saw a car approaching from  
8 the opposite direction with its  
9 lights off and stop across the  
10 street. Rosario and Palatono --  
11 P-A-L-A-C-I-O-S -- then heard  
12 gunshots. Quevedo panicked and  
13 drove away. When they returned a  
14 short time later, they saw the  
15 victim lying face down in the  
16 street in front of the apartment  
17 building. Jesus Zamora,  
18 Z-A-M-O-R-A, made a pizza delivery  
19 for Dominoes Pizza about 10:00  
20 p.m. that evening at 5918 Loveless  
21 Street. After delivering the  
22 pizza he pulled into the driveway  
23 at 5918 Loveless Street to write  
24 in his delivery book. As he was  
25 writing, he heard the sound of  
26 gunfire and the sound of a car  
27 coming rapidly in his direction.

18

1 He saw a car traveling on Loveless  
2 Street without the headlights on.  
3 The car passed Zamora and turned  
4 the car, straddling the curve.  
5 The lights of the car then came  
6 on, and Zamora saw the number 33  
7 on the license plate. He also  
8 noted that the car was a gray  
9 Caprice. He later related his  
10 observations to Bell Garden Police  
11 Officer Reuben Musquiz,  
12 M-U-S-Q-U-I-Z. Officer Musquiz  
13 then broadcast a description of  
14 the gray Caprice over the police  
15 radio. Around 10:50 p.m., Bell  
16 Police Officer Baley Hooper,  
17 H-O-O-P-E-R, observed a silver  
18 Caprice with 33 on it as the last  
19 two numbers on the license plate."  
20 And then I'm going to skip down and say -- well,  
21 let me read this in too.  
22 "-- proceeded westbound on  
23 Florence Avenue near the 710  
24 Freeway bridge. He radioed for  
25 assistance and followed the car  
26 into a driveway. Plaza, who was  
27 driving, and passenger Danny Silva



1 exit the vehicle. They were  
2 detained and subsequently  
3 arrested. Brown paper bags were  
4 placed on the hands of Plaza and  
5 Silva so they -- that they -- be  
6 tested for gunshot residue.  
7 Analysis residue from a pellet in  
8 Silva's hand indicate that Plaza  
9 and Silva had either shot a gun,  
10 handled a gun, or had been within  
11 with two (indiscernible) feet of a  
12 gun as it was fired."

13 Okay. That's enough for the record. And since  
14 you're not gonna be talking about the crime  
15 itself -- and counsel if I touch on an area that  
16 you want to object to, that's fine, I need to  
17 ask a couple of things though. At one time you  
18 denied your involvement.

19 INMATE PLAZA: Yes.

20 PRESIDING COMMISSIONER BIGGERS: Okay.  
21 When did you change that?

22 INMATE PLAZA: I'd have to say about an  
23 hour into the interrogation.

24 PRESIDING COMMISSIONER BIGGERS: An hour  
25 into the interrogation?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: Well, I

1 was looking at the Appellate Decision and it  
2 indicated -- I thought it looked like it was a  
3 little bit longer than that.

4 ATTORNEY RUTLEDGE: He maintains he was  
5 the driver of the vehicle, and they never --  
6 there were two people. Both people found in the  
7 car had gunshot residue. There was a third  
8 person that was never tried.

9 PRESIDING COMMISSIONER BIGGERS: Never  
10 tried, but yeah there were two. The two that  
11 had the residue was Mr. Plaza and Mr. Silva; is  
12 that correct?

13 INMATE PLAZA: That's correct.

14 PRESIDING COMMISSIONER BIGGERS: Okay.  
15 Can you tell me how you got the residue on your  
16 hands?

17 INMATE PLAZA: Yes, I handled the gun  
18 after it was fired plus I was in the vicinity of  
19 the shots being fired.

20 PRESIDING COMMISSIONER BIGGERS: Within  
21 two to four feet is what you're saying?

22 INMATE PLAZA: Yes, Sir.

23 ATTORNEY RUTLEDGE: Okay, I think we're  
24 getting into the commitment offense --

25 PRESIDING COMMISSIONER BIGGERS: Okay.  
26 At one time you talked about the (indiscernible)  
27 you requested it be turned to a manslaughter

21

1 (indiscernible), right?

2 INMATE PLAZA: My lawyer did, yes.

3 PRESIDING COMMISSIONER BIGGERS: Yes.

4 And that was shot down by the Appellate  
5 Decision. Are you still a member of that King  
6 Cobra gang?

7 INMATE PLAZA: I was never technically a  
8 member, but I was an associate. I hung around  
9 with gang members, to be totally honest. I hung  
10 around with several different gang members.  
11 People that I hung around with were from  
12 different gangs.

13 ATTORNEY RUTLEDGE: (Indiscernible).

14 INMATE PLAZA: Oh, being born and raised  
15 in East LA there's gangs all around.

16 PRESIDING COMMISSIONER BIGGERS: Yeah,  
17 there are -- some gangs are not as violent as  
18 others. There are some gangs that are just  
19 locals that hang out, too.

20 INMATE PLAZA: Not that I know of.

21 PRESIDING COMMISSIONER BIGGERS: Okay.  
22 Well, I'm familiar with LA. Not all of them are  
23 Bloods, Crips, or whatever names that they have.  
24 You indicated that you have spent a lot of time  
25 hanging around those people. Were you aware  
26 that -- well, that's getting back into the  
27 crime. Were you aware that -- the night in

22.

1 question, were you in with some of those known  
2 gang members?

3 INMATE PLAZA: Yes.

4 PRESIDING COMMISSIONER BIGGERS: Did you  
5 have any idea what was going to take place?

6 ATTORNEY RUTLEDGE: We would -- that  
7 would -- sorry, I have to object to --

8 PRESIDING COMMISSIONER BIGGERS: All  
9 right.

10 ATTORNEY RUTLEDGE: But we would accept  
11 the --

12 PRESIDING COMMISSIONER BIGGERS: Findings  
13 of the

14 ATTORNEY RUTLEDGE: -- Appellate --

15 PRESIDING COMMISSIONER BIGGERS:  
16 Appellate Decision. Okay.

17 ATTORNEY RUTLEDGE: Yes.

18 PRESIDING COMMISSIONER BIGGERS: All  
19 right. Then I will go and just look and see  
20 what else I think is -- talking about your  
21 priors.

22 DEPUTY DISTRICT ATTORNEY MORRISON:

23 Excuse me, Commissioner. I'm sorry, I may have  
24 missed it with all of this discussion. But did  
25 the Chair read the official version of the crime  
26 into the --

27 PRESIDING COMMISSIONER BIGGERS: I read

1 it from the Appellate Decision. Yes, it is.

2 DEPUTY DISTRICT ATTORNEY MORRISON:

3 Because the Appellate Decision is pretty  
4 lengthy.

5 PRESIDING COMMISSIONER BIGGERS: Yeah,  
6 and I read that in --

7 DEPUTY DISTRICT ATTORNEY MORRISON:

8 That's right. Okay.

9 ATTORNEY RUTLEDGE: It's probably why you  
10 fell asleep during that part.

11 PRESIDING COMMISSIONER BIGGERS: All  
12 right -- we're not going to have that now.

13 ATTORNEY RUTLEDGE: Just teasing.

14 PRESIDING COMMISSIONER BIGGERS: I know.  
15 We're going to keep everything on the up and up  
16 here. Okay. And did you have a juvenile  
17 history, because when I went through this I  
18 couldn't find anything. It says not available  
19 to Probation Department as far as five years  
20 after that. Did you have any juvenile history?

21 INMATE PLAZA: (Indiscernible).

22 PRESIDING COMMISSIONER BIGGERS: And the  
23 only adult history that you had was -- you were  
24 given 24 months probation for some vandalism --

25 INMATE PLAZA: Yes.

26 PRESIDING COMMISSIONER BIGGERS: What was  
27 that about?

24

1 INMATE PLAZA: I was arrested for  
2 vandalizing a store -- store property.

3 PRESIDING COMMISSIONER BIGGERS: Why did  
4 you do that?

5 INMATE PLAZA: To be honest with you, I  
6 was walking down the street, I was intoxicated,  
7 I seen the can sitting on the floor, I picked it  
8 up, what made we think I wanted to know what  
9 color it was I really am not sure today while I  
10 did that, but I did spray a one-inch diameter  
11 dot on the wall to see what color the can was  
12 and that's what I was arrested for -- a one-inch  
13 diameter dot on the wall.

14 PRESIDING COMMISSIONER BIGGERS: And they  
15 gave you two-years probation for that?

16 INMATE PLAZA: Yes.

17 ATTORNEY RUTLEDGE: It's usually three  
18 years under the Penal Code.

19 PRESIDING COMMISSIONER BIGGERS: Yeah,  
20 but that -- there had to be some extenuating  
21 circumstances as to priors --

22 DEPUTY DISTRICT ATTORNEY MORRISON:  
23 Misdemeanor probation in LA County summary  
24 probation is frequently two years. Sometimes  
25 for a (indiscernible) it's only one year.

26 ATTORNEY RUTLEDGE: But under the Penal  
27 Code you don't have to justify three years. You

25

1 just give three years.

2 PRESIDING COMMISSIONER BIGGERS: Okay,  
3 well, my question to you -- was there anything  
4 else that led them to give you only two years?

5 INMATE PLAZA: I wouldn't know.

6 PRESIDING COMMISSIONER BIGGERS: Okay.  
7 Let's talk a little bit about your drug -- do  
8 you have -- do you have a drug history?

9 INMATE PLAZA: Yes, I do.

10 PRESIDING COMMISSIONER BIGGERS: Okay.  
11 And what was your drug of choice?

12 INMATE PLAZA: Cocaine.

13 PRESIDING COMMISSIONER BIGGERS: Cocaine.  
14 And it says that you began snorting cocaine  
15 three times a week at the age of 16 --

16 INMATE PLAZA: Yes.

17 PRESIDING COMMISSIONER BIGGERS: -- and  
18 you continued use of this of -- until age 18,  
19 and you stopped at age 20.

20 INMATE PLAZA: Actually that's incorrect.  
21 I never actually stopped. I just decreased for  
22 a minute, and then I just elevated up until the  
23 time I was arrested.

24 PRESIDING COMMISSIONER BIGGERS: Were you  
25 -- the night you were arrested were you involved  
26 in alcohol or cocaine or anything?

27 INMATE PLAZA: Both. Alcohol and

1 cocaine.

2 PRESIDING COMMISSIONER BIGGERS: When did  
3 you start using alcohol?

4 INMATE PLAZA: I'd say age 15.

5 PRESIDING COMMISSIONER BIGGERS: You were  
6 still living at home, were you not?

7 INMATE PLAZA: Yes, I was.

8 PRESIDING COMMISSIONER BIGGERS: Were  
9 your parents aware that you were using cocaine  
10 and getting involved in drinking?

11 INMATE PLAZA: No, not at all?

12 PRESIDING COMMISSIONER BIGGERS: How  
13 could you hide that?

14 INMATE PLAZA: Well, my father'd been  
15 gone since I was about four years old so he's  
16 not in the picture. My mother, due to trying to  
17 support me and my other siblings -- she worked  
18 -- usually she had -- numerous times she usually  
19 had two jobs at a time. She's work day and  
20 night, so by the time she'd get home I'd already  
21 be home in bed.

22 PRESIDING COMMISSIONER BIGGERS: Okay.  
23 Did you -- I'll get in your social here  
24 (indiscernible) in a few minutes. But I wanted  
25 to find out were you -- let me go back. You  
26 were talking about the cocaine usage. You  
27 started using it at an early age right?



27

1 INMATE PLAZA: Yes.

2 PRESIDING COMMISSIONER BIGGERS: How did  
3 you support yourself in getting that?

4 INMATE PLAZA: I had a job. I used to  
5 work after school through the Cedar Program.

6 PRESIDING COMMISSIONER BIGGERS: Cocaine  
7 is a fairly expensive drug, isn't it?

8 INMATE PLAZA: Yes, it is.

9 PRESIDING COMMISSIONER BIGGERS: Okay.  
10 Were you buying it on the street?

11 INMATE PLAZA: Yes, I was.

12 PRESIDING COMMISSIONER BIGGERS: Costing  
13 you a pretty penny to do that, wasn't it?

14 INMATE PLAZA: Yeah, pretty much all my  
15 money.

16 PRESIDING COMMISSIONER BIGGERS: Okay,  
17 and you still say that your parents did not know  
18 that you were doing this?

19 INMATE PLAZA: No, they didn't.

20 PRESIDING COMMISSIONER BIGGERS: How  
21 about alcohol? What was your drink of alcohol  
22 that you liked?

23 INMATE PLAZA: Mainly my drink was  
24 Miller.

25 PRESIDING COMMISSIONER BIGGERS: Miller?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: And you

1 would take that in conjunction with?

2 INMATE PLAZA: Well, the alcohol started  
3 off as a, you know, what they call a gateway  
4 drug. It was the beginning of alcohol which led  
5 me to the cocaine and that was pretty much the  
6 two main -- my two main choices of alcohol and  
7 drug of choice was cocaine.

8 PRESIDING COMMISSIONER BIGGERS: Okay.  
9 Under Social Factors, you were born on February  
10 the 7, 1965 to Caroline and Jessie (phonetic)  
11 Plaza.

12 INMATE PLAZA: I believe there's an  
13 addendum behind that -- there's a --

14 PRESIDING COMMISSIONER BIGGERS: Yeah,  
15 that said he was born on 3/7/65.

16 INMATE PLAZA: That's correct, yes.

17 PRESIDING COMMISSIONER BIGGERS: Then you  
18 got -- the marriage took place on 5/12/84.  
19 That's your marriage, right?

20 INMATE PLAZA: Yes.

21 PRESIDING COMMISSIONER BIGGERS: Getting  
22 back to your -- you've got four brothers -- four  
23 sisters and a brother?

24 INMATE PLAZA: Yes.

25 PRESIDING COMMISSIONER BIGGERS: Okay.  
26 Are they still -- are all of them still living?

27 INMATE PLAZA: Yes, the are.

1           PRESIDING COMMISSIONER BIGGERS: Is any  
2 of them incarcerated?

3           INMATE PLAZA: No. And also if I might  
4 add, two of -- the two youngest sisters are  
5 actually half-sisters. They're from my dad's  
6 second marriage.

7           PRESIDING COMMISSIONER BIGGERS: Okay.  
8 And your wife's name is --

9           INMATE PLAZA: Guadalupe.

10          PRESIDING COMMISSIONER BIGGERS:  
11 Guadalupe Falcon (phonetic)?

12          INMATE PLAZA: Yes.

13          PRESIDING COMMISSIONER BIGGERS: And you  
14 married on 5/7/84, and you have three children.

15          INMATE PLAZA: That should be 5/12.

16          PRESIDING COMMISSIONER BIGGERS: You have  
17 12 children?

18          INMATE PLAZA: No, no, I'm saying the  
19 date. It should be 5/12; you said 5/7.

20          PRESIDING COMMISSIONER BIGGERS: Five  
21 seven, and it should be 5/12.

22          INMATE PLAZA: It should be 5/12/84.

23          PRESIDING COMMISSIONER BIGGERS: Okay.  
24 We'll make sure that that gets in to your

25 official record regardless of what happens here.

26          INMATE PLAZA: What was the question --  
27 I'm sorry --

30

1           PRESIDING COMMISSIONER BIGGERS: Do you  
2 have three kids? Three kids?

3           INMATE PLAZA: Yes, three children.

4           PRESIDING COMMISSIONER BIGGERS: And, in  
5 going through your file I saw that there was a  
6 letter from your wife and I'm sure that  
7 Commissioner Mejia will get in to. Any problems  
8 with the marriage?

9           INMATE PLAZA: I'd be lying if I said no.  
10 Sure, we have problems. But I mean nothing that  
11 we haven't gotten through.

12           PRESIDING COMMISSIONER BIGGERS: Well,  
13 I'm talking about because of incarceration  
14 (indiscernible).

15           INMATE PLAZA: Oh, yeah, well sure, you  
16 know. It's been hard on her being the single  
17 mother herself now. It was hard on me not being  
18 there able to support her. When I first left, I  
19 was the main source of, you know, support for  
20 the house so when I first got incarcerated she  
21 pretty much had to take everything on and do  
22 everything on her own, you know, and she kind  
23 of, you know, she felt abandoned, you know, and  
24 she had every right to feel that way because she  
25 had to just take over the whole household.

26           PRESIDING COMMISSIONER BIGGERS: Did you  
27 think about that when you were associating with

31

1 these known gang members? That that possibility  
2 -- that that could happen?

3 INMATE PLAZA: At the time, no, because  
4 my -- my thought -- my thought process wasn't on  
5 responsibility. To me responsibility was, I had  
6 a job, I paid the bills, I put food on the  
7 table, there was a roof over their heads, they  
8 had clothes on their backs. I thought that was  
9 responsibility. I didn't realize that it was a  
10 lot more to responsibility than that.

11 PRESIDING COMMISSIONER BIGGERS: But you  
12 were still -- you still had your drug habit and  
13 everything else --

14 INMATE PLAZA: And work. Yeah, I, you  
15 know, I functioned, you know, to the -- to  
16 everyone else I seemed to function in a normal,  
17 you know, capacity, but of course it was, you  
18 know, things behind the scenes that nobody knew  
19 about.

20 PRESIDING COMMISSIONER BIGGERS: Okay..  
21 Commissioner, do you have any questions on this  
22 subject?

23 DEPUTY COMMISSIONER MEJIA: Yeah, maybe  
24 about the remorse (indiscernible).

25 PRESIDING COMMISSIONER BIGGERS: Go.  
26 ahead.

27 DEPUTY COMMISSIONER MEJIA: How do you

32

1 feel about the man who was killed?

2 INMATE PLAZA: I'm -- in the case of the  
3 victim, I take full responsibly for the taking  
4 of his life. I can understand remorse. I've  
5 dealt with, you know, people dying around me in  
6 the past. It's not something that I'm new to.  
7 I understand that it not only affected him but  
8 it affected his family. It affected friends of  
9 his, society. I understand that technically we  
10 all -- we all have times in our lives when we  
11 wish we could turn back the clock but that's not  
12 possible. But I do take full responsibility for  
13 my actions.

14 DEPUTY COMMISSIONER MEJIA: How do you  
15 feel about the death of the victim; that's what  
16 I asked you.

17 INMATE PLAZA: The death of the victim?

18 DEPUTY COMMISSIONER MEJIA: Yeah, the  
19 human being that was killed. How do you feel  
20 about him being shot and being killed? I know  
21 all the peripheral that you said -- I  
22 (indiscernible) I want (indiscernible) how do  
23 you feel about him?

24 INMATE PLAZA: I'm very remorseful for  
25 the victim, for taking his life. He -- I'm very  
26 sorry that it happened. It was something that  
27 should not have happened. He didn't deserve

33

1 that, and I just can't -- I mean, there are no  
2 words that'll make it better or make it go away.

3 DEPUTY COMMISSIONER MEJIA:

4 (Indiscernible) that's it. I really don't have  
5 any questions.

6 PRESIDING COMMISSIONER BIGGERS: Okay.

7 Then I'll ask you to go into the Post Conviction  
8 Factors, please.

9 DEPUTY COMMISSIONER MEJIA: Okay. This  
10 is your initial parole consideration hearing Mr.  
11 Plaza, and your custody history is that you were  
12 initially accepted to the Wasco State Prison RC  
13 in 1991. You were transferred to California  
14 State Prison Folsom new facility in 1991,  
15 December. You were at Wasco in October, then  
16 December in 1991 you went to the Old Folsom  
17 (indiscernible). Then 2/21/1992, you went to  
18 CSP Calipatria, North and East. February of  
19 1994 you went to Lancaster, then 12/16/1997  
20 Avenal State Prison. And you went

21 (indiscernible) in 1998 of March, CTF. You had  
22 a brief period of time in CMF for medical issues

23 --

24 INMATE PLAZA: Correct.

25 DEPUTY COMMISSIONER MEJIA: And

26 (indiscernible) you have several jobs, and the  
27 most recent job is the (indiscernible) Porter?

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: And you have  
3 an associate (indiscernible). During your  
4 incarceration you went to education  
5 (indiscernible) electronics -- vocational  
6 Electronics, Air Conditioning Refrigeration, Dry  
7 Cleaning, Plumbing. You were a Porter and also  
8 a Teacher's Aide, Infirmary Dental Assistant.  
9 And, you have a high school diploma that 1983.  
10 You have a 12.0 TABE score. (Indiscernible) you  
11 have completed 32 units out of the Coastline  
12 Community College?

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And, you -- I  
15 see that you have really attempted to get some  
16 trades -- completion of vocational trades. You  
17 have completed, I think, 19 certification units  
18 when it comes to Air Conditioning and  
19 Refrigeration?

20 INMATE PLAZA: I've completed the whole  
21 course.

22 DEPUTY COMMISSIONER MEJIA: You completed  
23 that whole course?

24 INMATE PLAZA: Yes.

25 DEPUTY COMMISSIONER MEJIA: That's a  
26 problem. I couldn't find a completion. I saw  
27 the Certificate of Completion for the -- each



35

1 unit that's a component to the Refrigeration.

2 So you do have it there?

3 INMATE PLAZA: I believe --

4 DEPUTY COMMISSIONER MEJIA: That would be

5 good for the record, because I -- I saw the

6 certifications units been completed

7 (indiscernible) and how about the Data

8 Processing? I saw that you have completed 22

9 such units also?

10 INMATE PLAZA: Yeah, that was not a total

11 completion --

12 DEPUTY COMMISSIONER MEJIA: So,

13 Vocational Air Conditioning and Refrigeration --

14 you completed this?

15 INMATE PLAZA: Yes.

16 DEPUTY COMMISSIONER MEJIA: Okay. That

17 is the documentation.

18 ATTORNEY RUTLEDGE: (Indiscernible).

19 DEPUTY COMMISSIONER MEJIA: You know,

20 well you said that you completed two trades but

21 I can't find them in the file.

22 INMATE PLAZA: Yes, I understand the last

23 -- '95. On one of my doc hearings -- I think

24 it's right here (indiscernible). At one of my

25 doc hearings, the Commissioner went through my

26 paperwork and verified finding the --

27 DEPUTY COMMISSIONER MEJIA: Do you have a

1 copy of that --

2 INMATE PLAZA: -- chrono and the  
3 certificate, but it is no longer in the file.  
4 No, I do not have a copy. It's no longer in the  
5 file, but the Commissioner did see it at one  
6 point in time.

7 DEPUTY COMMISSIONER MEJIA: I saw that,  
8 yeah. The doc -- was that Patterson --  
9 Commissioner Patterson?

10 ATTORNEY RUTLEDGE: It looks -- Robert  
11 Patterson, yeah. It looks to be his signature.

12 DEPUTY DISTRICT ATTORNEY MORRISON: This  
13 (indiscernible) is that a progress hearing or  
14 something?

15 PRESIDING COMMISSIONER BIGGERS: No --  
16 Documentation Hearing. Before they go through  
17 initial they give them (indiscernible).

18 DEPUTY COMMISSIONER MEJIA: I don't see  
19 any in here. I've checked. No, I know you  
20 counted -- I counted 19 units. I'm just  
21 surprised that you have all these documents; you  
22 don't have the -- I'm not saying that you're not  
23 telling the truth, but you're so organized about  
24 everything else. But the most important is what  
25 you have completed. All the cert units are  
26 there -- are there, and I know what you learned,  
27 but the completion certificate is the most

37

1 important because that will count as a --

2 INMATE PLAZA: I understand.

3 DEPUTY COMMISSIONER MEJIA: -- check

4 completed. And, I cannot depend on what the

5 Deputy Commissioner saw. Maybe he had the

6 mistake of easing certification of it or

7 completion of it. I look at your file, and it's

8 like I said, you've got everything else but I

9 can't see the completion. Even on the other,

10 you know your education progress reports.

11 Nothing says (indiscernible) that you completed,

12 but I'm giving you credit for 19 certification

13 units of Air Conditioning and Refrigeration.

14 You also took some vocational Dry Cleaning,

15 which you haven't completed --

16 INMATE PLAZA: It's also a completion.

17 DEPUTY COMMISSIONER MEJIA: Oh, yeah?

18 What year did you complete that?

19 INMATE PLAZA: I believe it's -- it's on

20 that same page or the one before.

21 DEPUTY COMMISSIONER MEJIA: I guess, I

22 think you should just bring me the completion

23 chrono.

24 INMATE PLAZA: I don't have them

25 ATTORNEY RUTLEDGE: Four ten '95 is what

26 he has noted here, 4/10/95.

27 INMATE PLAZA: The last time I went

1 through the Board that -- when Patterson went  
2 through the doc hearing -- when I went through  
3 the doc hearing with Patterson -- '95. I had  
4 the paperwork with me. When I hit Avenal I lost  
5 half of my property and since then I have not  
6 had --

7 DEPUTY COMMISSIONER MEJIA:

8 (Indiscernible) contact the vocational --  
9 education where you took it -- the prison where  
10 you took it, and ask for a copy of the  
11 completion chrono or something to prove that you  
12 have completed it. That's something you can do.

13 ATTORNEY RUTLEDGE: It says the  
14 Refrigeration would have been 10/1/91, so that  
15 was --

16 PRESIDING COMMISSIONER BIGGERS: Excuse  
17 me, Commissioner Mejia. When you went through  
18 your C-file, did you not notice that those  
19 things were not there?

20 INMATE PLAZA: I did, but when I had seen  
21 that paperwork from the Chairman the --  
22 Commissioner, from the doc hearing, I thought it  
23 was going to be enough since he seen it and  
24 noted it on his record.

25 PRESIDING COMMISSIONER BIGGERS: Yeah,  
26 but (indiscernible) entirely different Panel we  
27 have to go by the documentation --

1 INMATE PLAZA: I understand.

2 PRESIDING COMMISSIONER BIGGERS: So,  
3 whenever you review whatever make sure that you  
4 have those papers.

5 DEPUTY COMMISSIONER MEJIA: Did you  
6 complete your Vocational Plumbing?

7 INMATE PLAZA: No, I was never in  
8 plumbing. I don't know where plumbing came  
9 from.

10 DEPUTY COMMISSIONER MEJIA: Well I have  
11 your diploma that -- Mr. Plaza has been unable  
12 to complete any certification units in  
13 vocational plumbing due to his being house in  
14 Level IV. Student left in the plumbing class  
15 long enough to be fully evaluated.

16 PRESIDING COMMISSIONER BIGGERS: What  
17 prison was that in?

18 DEPUTY COMMISSIONER MEJIA: ASP Avenal --  
19 Avenal State Prison.

20 INMATE PLAZA: I was in Wasco for, I  
21 think, three months and two weeks. But I was  
22 never in plumbing that I can remember. Soon as  
23 I got there they came out with the new law of  
24 the Close Custody -- not being, you know, not  
25 being able to be in that facility they  
26 transferred me over here.

27 DEPUTY COMMISSIONER MEJIA: Well, we'll

40

1 just leave it that you're claiming that you have  
2 completed Air Conditioning and Refrigeration; is  
3 that correct?

4 INMATE PLAZA: Dry Cleaning, Air  
5 Conditioning and Refrigeration.

6 DEPUTY COMMISSIONER MEJIA: Dry Cleaning  
7 you have completed?

8 INMATE PLAZA: Yes.

9 DEPUTY COMMISSIONER MEJIA: What year was  
10 the dry cleaning, again?

11 INMATE PLAZA: I believe it was '94 --

12 ATTORNEY RUTLEDGE: The Dry cleaning was  
13 -- I have completed 4/10/95, the Dry Cleaning  
14 and then the Air Conditioning, 10/1/99. What  
15 was the other one?

16 DEPUTY COMMISSIONER MEJIA: Most recent  
17 (indiscernible) Home Inspection.

18 INMATE PLAZA: I got that.

19 DEPUTY COMMISSIONER MEJIA: Okay. So,  
20 you're saying that you completed Air  
21 Conditioning and Vocational Dry Cleaning?

22 INMATE PLAZA: Yes.

23 DEPUTY COMMISSIONER MEJIA: And Air  
24 Conditioning Refrigeration? Anything else?

25 INMATE PLAZA: The Home Inspection, and  
26 the --

27 DEPUTY COMMISSIONER MEJIA: I'll go

# **EXHIBIT E**

## **Part 2 of 2**

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1 through that. But the actual vocational trade  
2 (indiscernible) because I know you took Data  
3 Processing, you did --

4 INMATE PLAZA: No, no --

5 DEPUTY COMMISSIONER MEJIA: -- assembly  
6 --

7 INMATE PLAZA: Yeah, I was not in the  
8 class --

9 DEPUTY COMMISSIONER MEJIA: Well, these  
10 are the two major ones that you're saying that  
11 you completed. Dry Cleaning, and Air  
12 Conditioning and Refrigeration.

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And then you  
15 did have -- completed the International  
16 (indiscernible) institute course, 8/23/1994.

17 INMATE PLAZA: That's Dry Cleaning.

18 DEPUTY COMMISSIONER MEJIA: That's  
19 connected to Dry Cleaning?

20 INMATE PLAZA: Yes.

21 DEPUTY COMMISSIONER MEJIA: Then you have  
22 -- you been in AA since 1994?

23 INMATE PLAZA: Ninety-three, '93, yeah  
24 somewhere around there. I don't remember the  
25 exact date.

26 DEPUTY COMMISSIONER MEJIA: But the  
27 chrono I saw was for '94.



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1 INMATE PLAZA: Ninety-four.

2 DEPUTY COMMISSIONER MEJIA: Okay, that's  
3 fine. And you're still going --

4 INMATE PLAZA: Yes.

5 DEPUTY COMMISSIONER MEJIA: -- according  
6 to these last chronos, 4/1/2006. Going to the  
7 (indiscernible) Labauche Literacy Program, peer  
8 education program, Christian Fellowship, courses  
9 in Anger Management 2005, CLN courses, you've  
10 been (indiscernible) also Christian basic  
11 classes, you been involved in Teddy Bear  
12 (indiscernible) Teddy Bear Drive, Softball -- I  
13 see all this stuff in there. But I'm concerned  
14 about the major ones; AA, NA, Anger Management,  
15 (indiscernible) Impact is good. Impact  
16 programming -- you did some peer education  
17 program (indiscernible) sexually transmitted  
18 diseases, Hepatitis. You did some Bible --  
19 seven-week Bible Study series Christian Living.  
20 Let's see. Anything else you want to add?

21 ATTORNEY RUTLEDGE: Can I ask you,  
22 Commissioner, would you -- do you have the  
23 completion of AA since '94 or we don't?

24 DEPUTY COMMISSIONER MEJIA: I have the  
25 chronos since 1994. What's the first one --

26 ATTORNEY RUTLEDGE: Okay, I just wanted  
27 to make sure we didn't need to verify --

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1 DEPUTY COMMISSIONER MEJIA: Oh, no, it's  
2 good --

3 ATTORNEY RUTLEDGE: Thank you.

4 DEPUTY COMMISSIONER MEJIA: -- 1994,  
5 group therapy in 1994 is the first documentation  
6 of him going to AA. He did make (indiscernible)  
7 time positively. He did some softball. You  
8 been going to softball, playing games and you're  
9 part of the team and like I said -- anything  
10 else? Those are the major ones that I have.  
11 I've (indiscernible) that you have completed.  
12 No 115s and no 128(a)s. According to the 812  
13 you do have affiliation or membership in  
14 Southside King Cobra. I have no other -- other  
15 than the 812 that the counselor completes every  
16 year when you go to classification I have no  
17 other information about him being involved in  
18 any gang (indiscernible) in prison. And, now  
19 we're going to go through your psych reports.  
20 Of course, there's two. Since this is your  
21 initial, we're gonna do -- I'm gonna read both  
22 the -- this was done -- the first one was done  
23 in July 21st, 1994, in Lancaster, by Dr. Isaac  
24 (indiscernible), and the diagnosis -- Diagnostic  
25 Impression at that time is Axis I, Poly  
26 Substance Abuse; Axis II, Combat Disorder, group  
27 kind; Axis III, to be evaluated by physicians;

1 Axis IV, Psycho Social Stressors, from mild to  
2 moderate incarceration; Axis V, Global  
3 Assessment of Functioning of 70, sentence and  
4 incarceration; and according to the doctor that  
5 their recommendation is -- he said at that  
6 present time,

7 "In 1994 it was difficult to  
8 assess the psychopathology that's  
9 related to the crime. The inmate  
10 does not reveal many details due  
11 to the appeal process. However it  
12 seems that he was involved in  
13 behavior (indiscernible) by lack  
14 of regard for others, drugs and  
15 alcohol abuse. The inmate has  
16 improved while incarcerated. He  
17 made a statement 'I grew up. I'm  
18 mature.' Quote unquote. It's  
19 also an observation of his  
20 examiner. The inmate was able to  
21 express himself in a manner that  
22 indicated (indiscernible)  
23 increased maturity. Living in a  
24 controlled setting it is too early  
25 to make any assessment. However  
26 his record indicates that he is  
27 able to follow rules and

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1 regulations and is also doing

2 above average programming.

3 (Indiscernible) recommended that

4 --"

5 [Thereupon the tape was turned over.]

6 DEPUTY COMMISSIONER MEJIA: --

7 psychological report on Mr. Plaza.. "It is

8 recommended for him to continue his work

9 involving trade and other meaningful

10 activities." Then we have the most current,

11 which is -- which is dated April 15th, 2006, by

12 Dr. Macomber, M-A-C-O-M-B-E-R, and the

13 Diagnostic Impression is Axis I, Drug and

14 Alcohol Abuse by history; Axis II, no

15 personality disorder; Axis III, no physical

16 disorder; Axis IV, Life Term Incarceration, GAF

17 of 95. This --

18 "He does speak in excellent

19 English as well as Spanish.

20 Affect was appropriate. There was

21 no evidence of anxiety or

22 depression. Eye contact was good.

23 His memory was intact

24 (indiscernible) was intact. His

25 insight and self-awareness were

26 good. Assessment of

27 Dangerousness. In the potential

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1 -- the prisoner's potential for  
2 dangerous behavior in the  
3 institution. Mr. Plaza has  
4 remained entirely  
5 disciplinary-free. This is  
6 commendable."

7 And the Causative Factors,

8 "He said that he has disassociated  
9 himself from the activity of  
10 Hispanic (indiscernible). No  
11 evidence that he had ever been  
12 involved in riots, possession of  
13 weapons, assaults and other --  
14 threats of any kind. At this time  
15 in this prison we have been --  
16 there has been frequent riots, and  
17 it is very difficult for a  
18 Hispanic male to disassociate  
19 himself from this activity which  
20 can spontaneously occur in front  
21 of him and if he doesn't get  
22 involved he will receive  
23 retaliation. In this case  
24 remaining disciplinary-free is a  
25 very difficult and commendable  
26 achievement. But because of his  
27 being disciplinary-free

1 (indiscernible) finds him  
2 definitely below average in  
3 comparison to other inmates.  
4 (Indiscernible) considering his  
5 dangerous behavior in the  
6 community -- potential for  
7 dangerous behavior in the  
8 community, Mr. Plaza has no prior  
9 arrest for violence before the  
10 commitment offense. He did  
11 receive an arrest as an adult  
12 making a (indiscernible) spraying  
13 a one-inch diameter dot on the  
14 wall. He remains  
15 disciplinary-free in the  
16 instituting. In order to examine  
17 this prisoner's level on parole,  
18 the level of (indiscernible) was  
19 administered and it's indicated  
20 the 12 measures that assess  
21 criminal history, substance abuse  
22 history, current adjustment, and  
23 other factors to determine risk  
24 level -- this measure he obtained  
25 a score of 3.6 (indiscernible)  
26 frequencies for prison for prison  
27 inmates. This means that if 100

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1 men were released on parole, he  
2 would be (indiscernible) better on  
3 parole than 96 of them. This is a  
4 very low risk level; as a result  
5 he poses no more threat to society  
6 than the average citizen in the  
7 community, and probably less  
8 threat to society at this point in  
9 his life. At the time of his  
10 offense, drugs and alcohol were a  
11 problem. However, at this point  
12 in his life it is no longer an  
13 issue therefore there are no  
14 significant risk factors for this  
15 case."

16 Any addition to my presentation, counsel, that I  
17 missed -- you want to --

18 ATTORNEY RUTLEDGE: Did you mention how  
19 he's helped other -- he's been like a mediator  
20 for other gangs?

21 PRESIDING COMMISSIONER BIGGERS: Yeah, he  
22 mentioned that.

23 ATTORNEY RUTLEDGE: Okay (indiscernible).  
24 That covers everything that we had including  
25 what we submitted.

26 PRESIDING COMMISSIONER BIGGERS: Okay,  
27 we're going to parole plans. Residence plans;

1 you're living with your brother Hector Plaza.  
2 Hector's residence is 353 Carla Drive, Simi  
3 Valley, California, 93063, and it's got a phone  
4 number here. Employment; Plaza plans on working  
5 Italia International, 4175 Dragon Street, Simi  
6 Valley California. I saw the letter of -- that  
7 documents that. Also your brother's letter.  
8 Assessment in re of Plaza's parole plans. "This  
9 counselor does not foresee any problems.  
10 However, it's recommended that Plaza updates his  
11 parole letters prior to this hearing." I have  
12 -- this letter's here (indiscernible) Dale Air  
13 International from Nick Gillichbauer,  
14 G-I-L-L-I-C-H-B- as in Boy A-U-E-R. It's  
15 indicated that he's the General Manager of the  
16 organization and he's willing to give him  
17 employment in the company and he will make \$9.00  
18 per hour as an assembler, working in assembly  
19 with the basic hours of 7 o'clock to 3:30 p.m.  
20 He will have (indiscernible) basic benefits of  
21 medical and dental. And there -- some of your  
22 support letters now. Jessica Plaza, dated  
23 February 20, 2006, a support letter indicating  
24 that -- lots of support from all the family and  
25 we need to (indiscernible) his mind and heart  
26 set to accomplish all the right things and not  
27 wrong things, for taking time to read this



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1 letter of support. She (indiscernible) says  
2 that she will -- Isabelle Plaza. Your sister  
3 also wrote a letter February 5, 2006. It  
4 doesn't say that you can -- yeah, it's  
5 supporting your release, but -- so Jessie --  
6 Jesus Plaza is some brother that you're going to  
7 be staying with --

8 INMATE PLAZA: No -- my dad is Jesus.

9 DEPUTY COMMISSIONER MEJIA: Your dad --  
10 your dad is Jesus Plaza? There's another  
11 letter, February 5, 2006. It says that you're  
12 ready to go back to society. There is Hector  
13 Plaza, November 12, 2005. He should be granted  
14 parole. He said that you should be granted  
15 parole and of course you have become a positive  
16 role model for everyone. He said that you will  
17 always have a home here with his wife and  
18 children, and I also plan on supporting him  
19 financially with whatever it takes to help you  
20 get on your feet.

21 INMATE PLAZA: Correct.

22 DEPUTY COMMISSIONER MEJIA:

23 (Indiscernible) Ministry (indiscernible) these  
24 are your aunts and uncles --

25 INMATE PLAZA: Yes.

26 DEPUTY COMMISSIONER MEJIA: Yolanda Plaza  
27 and Arto (Phonetic) Plaza. He's a Pastor in a

1 church?

2 INMATE PLAZA: Yes, he is.

3 DEPUTY COMMISSIONER MEJIA: They will  
4 provide you counseling, and will be able to  
5 provide you mentors and he's also owner of a  
6 construction business and would be services --  
7 if he needs employment -- if you need employment  
8 he will be able to give you employment.

9 INMATE PLAZA: He's also offering me to  
10 stay in his home. He gave me -- it's actually  
11 in this other packet -- has his phone number,  
12 cell number, anything you might need to ask him  
13 any further questions.

14 DEPUTY COMMISSIONER MEJIA: Helen Plaza  
15 is your mother?

16 INMATE PLAZA: Yes.

17 DEPUTY COMMISSIONER MEJIA: And I have a  
18 support letter here, asking that you should be  
19 -- asking for your release. She also said that  
20 you'll have a house to come home -- when you  
21 come home. Rachel Plaza, I think is your  
22 sister?

23 INMATE PLAZA: Yes, correct.

24 DEPUTY COMMISSIONER MEJIA:

25 (Indiscernible) you have her total support,  
26 either financially -- financial support.  
27 Christina Plaza, this is your daughter.

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1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Asking that.  
3 -- how old is she?

4 INMATE PLAZA: She is 19.

5 DEPUTY COMMISSIONER MEJIA: Oh. You have  
6 -- she indicates that you have supported her by  
7 teaching (indiscernible) classes. Thinks you  
8 should be -- she's going to college. She's  
9 looking for work to help (indiscernible) you,  
10 any way possible. And we have Guadalupe Plaza,  
11 your wife?

12 INMATE PLAZA: Yes.

13 DEPUTY COMMISSIONER MEJIA: Another  
14 support letter. She says I will support him in  
15 ever way that he needed for him to meet his  
16 parole conditions. Isaiah Plaza, your son?

17 INMATE PLAZA: Yes.

18 DEPUTY COMMISSIONER MEJIA: He -- how old  
19 is he?

20 INMATE PLAZA: He's ten.

21 DEPUTY COMMISSIONER MEJIA: Ten. And  
22 there's another one, Ramona Plaza, your -- your  
23 daughter, too?

24 INMATE PLAZA: That's correct.

25 DEPUTY COMMISSIONER MEJIA: Letter of  
26 support. Annette Gizmalla (phonetic). That's  
27 your sister?

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1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Another  
3 letter of support. She says she owns her own  
4 and will provide a place for you to live, help  
5 you financially and help you enter your programs  
6 with counseling to help you deal with everyday  
7 life's events for as long as it takes. And  
8 Alicia Desente Islanded (phonetic), who is this?  
9 Oh, this is -- this looks like it's a different  
10 one. Who's Juan Jose (indiscernible)?

11 INMATE PLAZA: Excuse me.

12 ATTORNEY RUTLEDGE: One from Mexico?

13 DEPUTY COMMISSIONER MEJIA: You have -- I  
14 couldn't read this. 9805 Jessie Plaza, okay,  
15 H12371 that's you. And, for M. Espinoza -- this  
16 is a friend?

17 INMATE PLAZA: Yes, it is.

18 DEPUTY COMMISSIONER MEJIA: Okay. It's  
19 another letter of support. And, Chaplain  
20 (indiscernible) Lindsey -- this is the Chaplain  
21 here in the prison --

22 INMATE PLAZA: Yes, it is.

23 DEPUTY COMMISSIONER MEJIA: Okay. Letter  
24 of support and he said that you have been an  
25 outstanding gentleman since his observation of  
26 you since 1998. He was appointed Music Deacon  
27 in 2003. You a musician? You play music?

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1 INMATE PLAZA: No. No. I just direct  
2 the choir.

3 DEPUTY COMMISSIONER MEJIA: Oh. He said  
4 that you have -- he has seen phenomenal changes  
5 in your life during these years and he's a  
6 wonderful role model, conscious of people's  
7 needs, feelings and (indiscernible). He's truly  
8 an asset to our religious program here at CTF.  
9 And he highly recommends consideration of the  
10 Board of Prison Terms and this gentleman has --  
11 he feels that you will be an outstanding asset  
12 in the community. Nabia Anegias (phonetic),  
13 cousin?

14 INMATE PLAZA: Say the name again?

15 ATTORNEY RUTLEDGE: Yeah, it's his  
16 cousin, Nadia Anegus (phonetic).

17 DEPUTY COMMISSIONER MEJIA: Nadia Anegus,  
18 another support letter.

19 ATTORNEY RUTLEDGE: Oh, well, you know  
20 what -- it's from the Juan (indiscernible)  
21 files. Poor Juan Reeves, (indiscernible) find  
22 these letters.

23 DEPUTY COMMISSIONER MEJIA: Okay, Jessie  
24 Plaza and that this is from an (indiscernible)  
25 from Glenbrook, Philadelphia?

26 INMATE PLAZA: Yes. That's actually --  
27 that's my sister --

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1 DEPUTY COMMISSIONER MEJIA: Your sister?

2 INMATE PLAZA: Yes. She married -- her  
3 name changed to Guerum (phonetic) but --

4 DEPUTY COMMISSIONER MEJIA: She said that  
5 she will continue to support you after release  
6 until you get back on your feet. She also  
7 offers her home.

8 INMATE PLAZA: Yeah.

9 DEPUTY COMMISSIONER MEJIA: Guadalupe  
10 Plaza, that's your wife. You said 2000 -- I  
11 don't know what year was this one, but I read  
12 (indiscernible) I know she's going to support  
13 you. January 7th, 2005, Jesus Plaza -- your  
14 father.. Right?

15 INMATE PLAZA: Yes, that's correct.

16 DEPUTY COMMISSIONER MEJIA: Okay. Ramona  
17 Plaza --

18 INMATE PLAZA: My daughter.

19 DEPUTY COMMISSIONER MEJIA: Your  
20 daughter. Isaiah Plaza -- I read that.

21 PRESIDING COMMISSIONER BIGGERS: Some of  
22 them are duplicates, some are from 2005 and some  
23 are 2006.

24 DEPUTY COMMISSIONER MEJIA: Anything else  
25 (indiscernible)?

26 ATTORNEY RUTLEDGE: I think you've  
27 covered every letter and more and even those

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1 that didn't belong to us. So, thank you.

2 DEPUTY COMMISSIONER MEJIA: And let me  
3 turn this back to the Commissioner.

4 PRESIDING COMMISSIONER BIGGERS: Okay,  
5 thank you. I just have one question there. I  
6 see that you want to parole to your brother.  
7 Why aren't you paroling back to your wife?

8 INMATE PLAZA: Oh, yes, my wife moved in  
9 with her sister two years ago. Her mother'd  
10 been fighting cancer. Unfortunately her mother  
11 passed away November of last year, and currently,  
12 she's still living with her sister. But upon my  
13 release, hopefully within the next, you know,  
14 within three to six months, between the both of  
15 us we'll have the money to put a first and last  
16 down payment, you know, that you need for your  
17 -- our own place so that we can live together.  
18 But currently she's with her sister.

19 PRESIDING COMMISSIONER BIGGERS: Did I  
20 miss anything -- talking about the, what little  
21 we could talk about the crime --

22 ATTORNEY RUTLEDGE: You know, I meant to  
23 point out to you -- it's up to your discretion.  
24 He did provide a version in the Board Report.

25 PRESIDING COMMISSIONER BIGGERS: Yeah, I  
26 saw that.

27 ATTORNEY RUTLEDGE: Other than that,

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1 except for Closing Statement, we have nothing  
2 else to --

3 PRESIDING COMMISSIONER BIGGERS: To talk  
4 about -- okay. At this point then I'm gonna ask  
5 the District Attorney if he has any questions  
6 for the -- Mr. Plaza.

7 DEPUTY DISTRICT ATTORNEY MORRISON: Okay.  
8 Did I hear the inmate say that he accepted  
9 responsibility for the crime an hour into the  
10 law enforcement interview?

11 INMATE PLAZA: Correct.

12 PRESIDING COMMISSIONER BIGGERS: Please  
13 direct your answers to (indiscernible).

14 DEPUTY DISTRICT ATTORNEY MORRISON: Just  
15 a moment, please. So at the time of his trial,  
16 the inmate accepted full responsibility for the  
17 crime.

18 INMATE PLAZA: Correct.

19 DEPUTY DISTRICT ATTORNEY MORRISON: Thank  
20 you. I have no further questions. Oh, wait a  
21 minute. Does the inmate know what the matrix  
22 for this crime is?

23 INMATE PLAZA: I believe it's 27, 28  
24 years.

25 DEPUTY DISTRICT ATTORNEY MORRISON: Thank  
26 you. Nothing further.

27 PRESIDING COMMISSIONER BIGGERS: Okay,



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1 thank you, sir. Ms. Rutledge.

2 ATTORNEY RUTLEDGE: Thank you. In  
3 looking through some of your information I came  
4 across a letter that's -- I wanted to ask you  
5 about this letter. It's addressed to all family  
6 members, loved ones, and friends of Patrick  
7 Littlebull. You made an attempt to submit an  
8 apology letter to his family or to the District  
9 Attorney?

10 INMATE PLAZA: I mailed that to the  
11 address indicated on the (indiscernible).

12 ATTORNEY RUTLEDGE: All right. And what  
13 was -- I didn't see the -- what was the address?

14 INMATE PLAZA: Is it not on the  
15 letterhead of the --

16 ATTORNEY RUTLEDGE: Oh, the  
17 Correspondence Division in Sacramento.

18 INMATE PLAZA: Yes. Sacramento, yes.

19 ATTORNEY RUTLEDGE: Okay, and that was  
20 dated June 15th, 2004. It -- I'll go ahead and  
21 leave it if the Board wishes to review it, but I  
22 think you wrote it on the prompting of Impact?

23 INMATE PLAZA: Yes, correct.

24 ATTORNEY RUTLEDGE: Anyway, I just wanted  
25 to note that this letter -- he had written a  
26 letter to the family, and what did you learn in  
27 Impact?

1 INMATE PLAZA: Do you want to be  
2 specific, or do you want me to tell you  
3 everything that I learned in Impact?

4 ATTORNEY RUTLEDGE: Well, what changed  
5 your life about Impact?

6 INMATE PLAZA: I'd have to say the thing  
7 that was a drastic blow to me more than anything  
8 was there was an individual by the name of Angie  
9 Torres, her son was killed in a drive-by here in  
10 Salinas and I had the opportunity to sit down  
11 with her and discuss with her some of the  
12 specifics of my crime and in sharing with her --  
13 she had not shared with me but I shared with  
14 her, and upon finishing my, you know, my talk  
15 with her I introduced her -- I am a facilitator  
16 of Impact -- I introduced her and I went and sat  
17 down with the audience in the pews and then she  
18 had her opportunity to get up and give a  
19 presentation, and when she gave the presentation  
20 the similarities of what happened to her son was  
21 just -- it was eerie because they were just so  
22 close, and afterwards we had the opportunity to  
23 talk and she told me, you know, that -- she  
24 said, yeah you don't know what you did when you  
25 were talking to me. She says, you know, and you  
26 didn't even know my story and the same for me.  
27 I didn't know her story, but yet I shared with

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1 her, and then upon learning her story it just --  
2 it blew me away because I just realized what it  
3 must have felt like to be on the other side.  
4 Because in Impact that's one of the things that  
5 we teach. We teach victim awareness. We teach,  
6 you know, so many people are used to being on  
7 the side of the crime -- on the side of, you  
8 know, being the wrong one, and they never know  
9 what it's like to be on the other side. Most  
10 guys come out of that program with a totally  
11 different vision of crime. A lot of them come  
12 out and they say, wow, I never knew that I had  
13 that impact on my victims. So it -- it really  
14 -- it had -- it gave me a greater view, you  
15 know. It wasn't just that focus on one person  
16 or one individual. It opened my understanding  
17 of how many -- how great an effect it had.

18 ATTORNEY RUTLEDGE: What about the people  
19 in this room? Do you think this offense affects  
20 us?

21 INMATE PLAZA: Oh, definitely,  
22 definitely. I believe it does because -- again,  
23 speaking on the ripple effect, not only did it  
24 effect him, his family, his friends or his loved  
25 ones, but it effected society and I realize that  
26 it all trickles down and what happens is taxes,  
27 money, time spent, you know, it all, you know,

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1 it's a ripple effect that never reaches the  
2 banks of the water.

3 ATTORNEY RUTLEDGE: All right. And,  
4 there's a statement in the Probation Report  
5 that's pretty negative about you. I mean,  
6 you're in a car with gang-bangers and someone is  
7 shot and killed and left to die on the street.  
8 How do you go from that to the person that you  
9 are today? What happened?

10 INMATE PLAZA: I would have to say even  
11 though I chose that -- to hang around with them  
12 type of people, you know, chose to be around  
13 that lifestyle, in all honesty I never expected  
14 to end up in prison and upon --

15 ATTORNEY RUTLEDGE: (Indiscernible).

16 INMATE PLAZA: -- honestly I didn't. But  
17 upon me actually making it to prison due to bad  
18 choices, it was just a slap in the face, you  
19 know. It was just reality and when it hit me I  
20 realized that, you know, everything that I had  
21 been doing, you know, reality was what I got,  
22 you know, being in prison and it wasn't  
23 something that -- it just didn't sit right with  
24 me, and I knew that this wasn't me, you know. I  
25 didn't -- I didn't want to -- I didn't want to  
26 be in prison or be one of them persons that go  
27 in and out of prison, so it was a -- it was a,

1 you know, it was a rude awakening.

2 ATTORNEY RUTLEDGE: No further questions.

3 PRESIDING COMMISSIONER BIGGERS: Okay.

4 Thank you. At this point I'm going to ask Mr.  
5 Morrison for his closing.

6 DEPUTY DISTRICT ATTORNEY MORRISON: The  
7 District Attorney opposes parole for this  
8 outrageous heinous and premeditated, vicious  
9 gang attack. The inmate aided and abetted by  
10 driving his vehicle over to the location of the  
11 murder, parking it without its lights in what  
12 the Appellate opinion described as almost lying  
13 a wait attack. And Mr. Littlejohn (sic) a rival  
14 gang member was shot and killed. He was not the  
15 only victim. The Bell Garden's Police Report  
16 which had been submitted along with the  
17 Sheriff's Homicide Report note that the  
18 supplemental report Officer Winfrey,  
19 W-I-N-F-R-E-Y, Bell Garden PD was staffed to the  
20 home of witness Collins who found a hole in his  
21 south kitchen window and an adjacent hole in the  
22 wallboard next to the window. The officer  
23 observed a hole, approximately one inch in  
24 diameter, in the lower portion of the south  
25 kitchen window. Glass fragments were present on  
26 the interior window sill. Another little hole  
27 was present in the interior vertical portion of

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1 the inside of the window frame, and the reason  
2 this is significant is because the inmate with  
3 his gang mentalities and his crime partner  
4 sprayed bullets in a residential neighborhood.  
5 One was recovered from victim Littlejohn which  
6 was matched to the murder weapon which was found  
7 secreted in the inmate's car. The witnesses  
8 which described in the reports, noted numerous  
9 shots being fired and any one of those bullets  
10 could have gone through the house like it did  
11 Mr. Collins home and killed another innocent  
12 person in their home, minding their own  
13 business. This is the kind of gang that's  
14 plagued Los Angeles and all communities around  
15 the state and country, senseless gang violence.  
16 The motive was a retaliatory shooting because  
17 the Bell Garden Locos had fired on King Cobra  
18 earlier that night. The inmate should be  
19 commended; he's programmed well. Not many  
20 people come this long without a 115. He is on  
21 the way to turn his life around, as evidenced by  
22 his programming. However, the inmate still I  
23 don't believe has come to grips with the crime  
24 because he's still not candid with the Board.

25 ATTORNEY RUTLEDGE: Objection.

26 PRESIDING COMMISSIONER BIGGERS:

27 (Indiscernible) statement. Please continue.

1           DEPUTY DISTRICT ATTORNEY MORRISON: The  
2 inmate said he took responsibility into the  
3 Sheriff's interview, and this was documented at  
4 length in the Appellate Opinion as well as the  
5 statements contained in the police report. This  
6 is in the Appellate Opinion, Page Four and Five,  
7 which has not been read into the record yet.  
8 "Deputy Sheriff Woods Danoff, D-A-N-O-F-F,  
9 interviewed appellant on May 27th, 1990."

10           ATTORNEY RUTLEDGE: We would object to  
11 the reading of the police report, just because  
12 it's submitted there's still not adequate  
13 foundation for it to be read into the record.

14           DEPUTY DISTRICT ATTORNEY MORRISON: This  
15 is the Appellate Opinion summarizing the  
16 evidence at trial.

17           ATTORNEY RUTLEDGE: I'm sorry, I thought  
18 you said a Sheriff's Report.

19           PRESIDING COMMISSIONER BIGGERS: Go  
20 (indiscernible).

21           DEPUTY DISTRICT ATTORNEY MORRISON: Page  
22 Four in the Appellate Opinion, Deputy Sheriff  
23 Woods Danoff, who is one of the two LA SD  
24 homicide investigators in the case who  
25 interviewed the inmate.

26           "He interviewed appellant inmate  
27 on May 27th, 1990. Appellant at

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1 first denied any knowledge of the  
2 shooting, maintaining he had been  
3 at a party at the time of the  
4 shooting. After being informed  
5 that his car had been identified  
6 as being used in the homicide and  
7 that the gun had been recovered  
8 from the car, appellant admitted  
9 that he drove the car that was  
10 used in the shooting -- "

11 DEPUTY COMMISSIONER MEJIA: Excuse me --

12 PRESIDING COMMISSIONER BIGGERS:

13 Continue, Sir.

14 DEPUTY DISTRICT ATTORNEY MORRISON: I'll

15 repeat the last sentence, since it was --

16 "After being informed that his car  
17 had been identified as being used  
18 in the homicide and that the gun  
19 had been recovered from the car,  
20 appellant admitted that he drove  
21 the car that was used in the  
22 shooting and (indiscernible)  
23 supplied the weapon and the car.  
24 Appellant claimed that the shooter  
25 was named someone -- someone named  
26 Oso, O-S-O, and that he neither  
27 slowed the car down nor stopped



1 the car and never turned off his  
2 headlights. He claimed Oso later  
3 left the car and that he later  
4 picked up Silva and was giving him  
5 a ride to Silva's sister's house  
6 when they were stopped and  
7 arrested."

8 Now, the inmate apparently is saying that's when  
9 he accepted responsibility. I asked the inmate  
10 specifically if he had accepted responsibility  
11 in the testimony at his trial, and that is not  
12 correct according to the Appellate report  
13 summary of the inmate's testimony. The inmate's  
14 testimony, under oath, at trial was a denial.  
15 The Appellate Report continues on the same page.

16 "Appellant testified he gave a  
17 ride to a man named Oso who was  
18 seeking to purchase cocaine. Oso  
19 told the appellant that he could  
20 not use his own car because it was  
21 hot. While looking for the  
22 cocaine to sell, the appellant saw  
23 seven to ten men running at his  
24 car. The appellant accelerated  
25 and hear Oso shout punks at the  
26 men. Oso then pulled out a  
27 revolver and fired. Appellant

1           drove away. Appellant did not  
2           know that Oso had a gun until he  
3           fired it. His car lights were not  
4           turned off, and he slowed down  
5           only for the purpose of finding  
6           the cocaine dealer. Oso tried to  
7           hand appellant the revolver after  
8           he fired it, but appellant pushed  
9           it away and it fell into the part  
10          of the car where the radio was  
11          missing. Appellant refused to  
12          disclose the identity of Oso  
13          saying he would be killed if he  
14          did."

15 I submit that that is not accepting  
16 responsibility for being the aider and abeter,  
17 driving a fellow gang member over to the  
18 location, parking with your lights out in what  
19 the Appellate Court labeled almost lying in  
20 wait, and allowing your crime partner to go up  
21 and shoot a rival gang member motive being gang  
22 retaliation, and as I had said spraying bullets  
23 all around. The defendant's testimony at trial  
24 was a rejection of responsibility, a denial of a  
25 commission of the crime, and is absolutely not  
26 what he told the Panel today that he accepted  
27 responsibility in the trial. He's basically

1 says, oh, I gave some dude a ride to go buy some  
2 coke and then all of a sudden he pulls out a gun  
3 and starts shooting somebody. I had no idea.  
4 That is not responsibility. The inmate was  
5 attempting to be exonerated of the crime. The  
6 Appellate Report Opinion goes into great length,  
7 and I won't read it all, but on Page Six it  
8 describes all the evidence testified by other  
9 witnesses supporting of pre-meditated murder.

10 "The appellant's driving slowly  
11 with his lights off, thus  
12 eliminating attention to his  
13 approaching car is strong evidence  
14 of prior planning. The approach  
15 without lights is factually  
16 similar to lying in wait and  
17 illustrates a deliberate plan by  
18 the occupants of the car to  
19 approach to victim unnoticed so  
20 that the killing could be  
21 accomplished from a position of  
22 surprise and advantage. The  
23 relationship between appellant and  
24 the victim, each belonging to  
25 rival gangs between which there  
26 was bad blood provided evidence of  
27 the appellant's motive for the

1 shooting. The manner of the  
2 shooting, one person shooting and  
3 another driving so as to  
4 facilitate an easy and rapid  
5 escape especially when coupled  
6 with appellant's slow approach to  
7 the scene with his lights off  
8 reflects that the killing resulted  
9 from a pre-conceived desire."

10 This is about as callous, cold-blooded and  
11 calculated murder as you can have. The only  
12 thing was the appellant apparently did not pull  
13 the trigger. But he did everything short of  
14 that. The psych report in 1994, said well he  
15 didn't really want to go into the details of it  
16 because it was still on appeal. Current psych  
17 report just glosses over the apparent lack of  
18 insight and says because of his good behavior he  
19 is a low risk. I submit that until he  
20 demonstrates more credibility with the Panel and  
21 more insight into his actual role and  
22 participation, he has not taken responsibility  
23 for it and therefore his statements of remorse  
24 and the psych report are not actually supportive  
25 because they really didn't delve into it. The  
26 fact that he hadn't been caught in other crimes,  
27 had a minimal criminal record is commendable.

1 It's not really an escalating pattern of  
2 violence. He did have summary probation, but  
3 the inmate told the psychologist in 1994, which  
4 was also kind of troubling, that he had the  
5 mentality of a 15 year old. He indicated that  
6 this tragic event, being convicted of murder,  
7 was a quote "wake up call" --

8 ATTORNEY RUTLEDGE: Objection. It  
9 doesn't say being convicted of murder.

10 PRESIDING COMMISSIONER BIGGERS: What  
11 page are you on, sir?

12 DEPUTY DISTRICT ATTORNEY MORRISON: I  
13 just -- it doesn't. I am commenting on his  
14 psych report. He's -- the inmate indicated --

15 PRESIDING COMMISSIONER BIGGERS: Just a  
16 second, sir. Okay. Let's keep this civil and  
17 it's not written -- are you reading directly  
18 from the psychologist's report?

19 DEPUTY DISTRICT ATTORNEY MORRISON: I  
20 read it and then I made a parenthetical comment.

21 PRESIDING COMMISSIONER BIGGERS: Okay.  
22 Then perhaps you should paraphrase it saying  
23 your opinion. Continue.

24 DEPUTY COMMISSIONER MEJIA: What is  
25 interesting is talking about that the immature  
26 behavior at the time -- that's on Page One of  
27 the report, and he stated I had the mentality of

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1 a 15 year old. The official version read  
2 described a juvenile man. The inmate was 25 at  
3 the time of his crime. This is not a youthful  
4 offender, unsophisticated (indiscernible). This  
5 isn't a 15 or 16 year old gang banger. This is  
6 a 25 year old out on a mission of revenge.

7 ATTORNEY RUTLEDGE: Objection. Mission  
8 of revenge? Where's that from? You're supposed  
9 to -- excuse me. I just want to note that the  
10 DA's supposed to -- your comments are supposed  
11 to be supported by documentation.

12 PRESIDING COMMISSIONER BIGGERS:  
13 (Indiscernible).

14 DEPUTY COMMISSIONER MEJIA: The Appellate  
15 Decision -- talking about a retaliatory gang  
16 opinion -- member for a --

17 PRESIDING COMMISSIONER BIGGERS: Let's --  
18 let's -- okay. Let's -- whenever --

19 DEPUTY DISTRICT ATTORNEY MORRISON: this  
20 is within the range of proper comment.

21 PRESIDING COMMISSIONER BIGGERS: Then Mr.  
22 Morrison, if we're gonna speculate I think we  
23 need to make sure that we say and we make  
24 (indiscernible) in your opinion or -- I don't  
25 think that we should speculate on something of  
26 this nature.

27 DEPUTY DISTRICT ATTORNEY MORRISON:

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1 Commissioner, excuse me, but I'm permitted to  
2 make public comment. I'm not asking you to  
3 speculate. The Appellate Decision describes --

4 PRESIDING COMMISSIONER BIGGERS: I  
5 understand --

6 DEPUTY DISTRICT ATTORNEY MORRISON: --  
7 any motivation --

8 PRESIDING COMMISSIONER BIGGERS: I  
9 understand that.

10 ATTORNEY RUTLEDGE: From another --

11 DEPUTY DISTRICT ATTORNEY MORRISON: There  
12 was a rival shooting. There was a rival  
13 shooting --

14 PRESIDING COMMISSIONER BIGGERS: I  
15 understand that.

16 DEPUTY DISTRICT ATTORNEY MORRISON: Now,  
17 if the gang goes out to retaliate --

18 PRESIDING COMMISSIONER BIGGERS: Then  
19 that's the way you should phrase it -- that  
20 based on --

21 DEPUTY DISTRICT ATTORNEY MORRISON: That  
22 is what gang members refer to as getting  
23 revenge.

24 PRESIDING COMMISSIONER BIGGERS: I  
25 understand that, sir.

26 DEPUTY DISTRICT ATTORNEY MORRISON: And  
27 my comment is that he was out on a mission of

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1 revenge that resulted in the death and a shot up  
2 neighborhood. And therefore, a particularly  
3 egregious crime under Dannenberg, as the Chair  
4 noted the case the inmate submitted, and he is  
5 unsuitable for parole and we ask for a three  
6 year denial. Thank you.

7 DEPUTY COMMISSIONER MEJIA: Let's --  
8 before you do your -- let me just put on the  
9 record that he does have the completion  
10 paperwork, because it was very confusing -- you  
11 had to really look at it. He did have Air  
12 Conditioning completion in October 1997. It's  
13 just confusing. It doesn't say he completed it.  
14 It says his assignment (indiscernible) and Mr.  
15 Plaza has completed 15 certification units, 100%  
16 of the class. Maybe that how we --

17 INMATE PLAZA: A hundred percent of what?

18 DEPUTY COMMISSIONER MEJIA: Of the class.  
19 I don't know what it means, sir, but it does say  
20 that he has completed -- units completed. This  
21 is the Education Progress Report. Normally they  
22 put here completed completion, but it just say  
23 completed some of the curriculum -- that's when  
24 he was a Clerk. And then when he became a  
25 student he completed 15 certification units,  
26 100% of the class. So I would say that is  
27 completion.



1           PRESIDING COMMISSIONER BIGGERS: All  
2 right thank you.

3           DEPUTY COMMISSIONER MEJIA: And then  
4 another one is October 28, 2000 -- October 28th  
5 -- April 28th, 1995, he completed his Vocational  
6 Dry Cleaning. Another confusing chrono here.  
7 We may have to look at it again. A handwritten  
8 (indiscernible) Teacher's Aide and  
9 (indiscernible) he was a key person assisting in  
10 (indiscernible) Dry Cleaning program, all areas  
11 in training and development of other students.  
12 He has learned all aspects of this Dry Cleaning  
13 business. And it's noted here, reason for the  
14 termination, his job change -- Job change  
15 completed. So which means I would say  
16 (indiscernible) in 1994, (indiscernible) 1995 he  
17 has completed the Dry Cleaning business.

18          PRESIDING COMMISSIONER BIGGERS: So  
19 basically you're saying the chrono's in support  
20 of completion; just don't have the --

21          DEPUTY COMMISSIONER MEJIA: Yeah, the  
22 actual completions.

23          PRESIDING COMMISSIONER BIGGERS: The  
24 actual completions. Ms. Rutledge, closing  
25 please.

26          ATTORNEY RUTLEDGE: Thank you for  
27 verifying that for us, Commissioner. While I'd

1 like to go off of the suitability factors, I  
2 think that's most appropriate. We're here today  
3 because we -- well you know why we're here, the  
4 legislature sets an open term for a crime such  
5 as this and -- meaning that there is a belief  
6 that persons committed for first-degree murder  
7 may at some point become suitable members of  
8 society, people who have paid their debt to  
9 society, bettered themselves, and we can all  
10 feel reasonably safe that they're out among us.  
11 Had this commitment offense been of the -- had  
12 it been truly lying in wait -- which is a  
13 special circumstance of first-degree murder  
14 punishable by death, we may not be sitting here  
15 today. The commitment offense itself, my client  
16 has taken responsibility for it. What was said,  
17 his testimony to the Court, matches what he has  
18 said in earlier reports. And, under Dannenberg,  
19 specifically Dannenberg, I think is supportive  
20 of when you have to -- and I know you have to  
21 weigh the commitment offense but weighing that  
22 in, Dannenberg says if it doesn't take more than  
23 it was necessary to complete the murder. This  
24 victim was shot and died within minutes.  
25 There's no evidence of mutilation, there's no --  
26 there were no other targeted victims. We found  
27 a bullet -- but we don't even know if anybody

1 was home. There's no evidence that there were  
2 other people that were actually at harm at the  
3 time of the shooting. In moving on to my  
4 client's remorse for this offense. He has --  
5 he's expressed today his remorse for this crime,  
6 but I think more importantly his determination  
7 to turn himself around. Had he been such a hard  
8 core gang member, he'd never had made it this  
9 far. We know that. We know how it is to enter  
10 a prison on a Level IV and what it takes to  
11 survive. And it takes a lot of determination.  
12 It takes somebody who truly does realize that,  
13 you know, there's a better way to live. And, I  
14 think to his, you know -- the prison Chaplain  
15 (indiscernible) he doesn't write letters for  
16 very many inmates. This is the first one I've  
17 seen. And he wrote something really important  
18 because I think -- I think this really says it  
19 all about my client as far as remorse would go,  
20 I think that that I would speculate and submit  
21 that that's -- he could be programming doing  
22 everything he's supposed to do and not go to  
23 church. There's got to be some -- I would  
24 submit or speculate that perhaps he's got some  
25 insight and a conscience to where he feels the  
26 need to associate with the church. And, there  
27 was a paragraph that wasn't read during the

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1 letters that I just wanted to say and it was  
2 written by Chaplain Lindsay. And it says,

3 "People often ask me what kind of  
4 results I see in my work here in  
5 the prison. I will hold up one  
6 hand showing the number five, and  
7 they will say those odds aren't  
8 very good since there are more  
9 than 7,000 plus inmates in your  
10 facility. To which I'll reply,  
11 you're right, except I look at it  
12 as mining for diamonds and when  
13 you find one you have some -- when  
14 you find one you have something of  
15 value."

16 Well, inmate Plaza is one of those diamonds.  
17 You know, I'm not going to sit her and  
18 regurgitate all of his accomplishments and the  
19 binder he provided to the Board -- we've gone  
20 over them. In every area of programming he's  
21 met -- he's met self-help, he admits his  
22 substance abuse, he's been treating that  
23 substance abuse, he's done Impact, he's done  
24 Anger Management, he's participating in sports,  
25 he has an excellent job record. He's actually  
26 got a chrono from his supervisor in Culinary  
27 who's recommending him for a job, I mean,

1 anticipating that an employer on the outside  
2 where the public has access to the restaurant  
3 that he's going to present that in a public  
4 place and ask for employment. He has, you know,  
5 taken other health courses and has not had a 115  
6 or anything in 15 years, which is extremely  
7 commendable. And again, that more expresses, I  
8 think, his insight in to literally reversing his  
9 life. He said he was leading an irresponsible  
10 life at that time; however he did work and  
11 support his wife and children. Did you have one  
12 child at that time or --

13 INMATE PLAZA: Two.

14 ATTORNEY RUTLEDGE: He had two that he  
15 supported. So he did -- it was like he said, he  
16 was kind of a -- he was a dysfunctional person  
17 over all, but able to maintain a job and take  
18 care of his family which indicates that there  
19 are pro social qualities in this man. He's not  
20 just some thug out there, you know, blowing  
21 people away. He has a very stable social  
22 history as far as being with his family, being  
23 married. He's still married to the same woman;  
24 still has three children. Appreciates the  
25 impetus he put on her when he entered the  
26 institution and forced her into being a single  
27 parent. He's got letters from his children that

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1 he's attempting to father from prison, cousins,  
2 other assortment of persons, and also he has at  
3 least two job offers. One from Mr. Rentaria  
4 (phonetic) and then one from his previous  
5 employer -- was it --

6 INMATE PLAZA: Yes.

7 ATTORNEY RUTLEDGE: -- where he worked.  
8 He had a good job record there before he entered  
9 the institution. And aside from all the great  
10 things he's done which I think all point to  
11 suitability and the fact that he has expressed  
12 his remorse and does, by his actions not just  
13 his comments, have insight into how much trouble  
14 he created with this offense and saw what he  
15 needed to do to turn it around. But I think we  
16 do -- I think oftentimes in these types of cases  
17 there's the white elephant in the room, which is  
18 time. This is his first hearing and it's almost  
19 a given that nobody gets paroled their first  
20 hearing. I think the jargon is always he needs  
21 to maintain his gains or you point to the  
22 commitment offense, but I think that the  
23 suitability --

24 DEPUTY COMMISSIONER MEJIA: -- hold it.

25 [Thereupon the tape was changed to Tape Two.]

26 DEPUTY COMMISSIONER MEJIA: Okay, go  
27 ahead, continue. Second side, second set of

80

1 tapes for Mr. Plaza.

2           ATTORNEY RUTLEDGE: I do believe that  
3 this man meets every single suitability factor.  
4 He has completed his programming -- I mean, he  
5 remains active in his programming and he's done  
6 all those things necessary to show us that he's  
7 serious about release and I think the only  
8 question that would linger would be time,  
9 because often we don't see people paroled by  
10 their first hearing but I would say this man is  
11 one of the few cases that we see where he's  
12 suitable at his first hearing. He's suitable.  
13 He's prepared to enter the outside. He's got a  
14 plan and the information he submitted to the  
15 Board wherein he's going to -- exactly what he's  
16 going to do when he walks out the doors. I  
17 would just ask this Board -- I know it's a  
18 difficult job for you and I know you've gotta  
19 consider the person paying their debt to society  
20 because that's part of our justice system, but I  
21 would ask you to -- to give this man a different  
22 look as somebody who is suitable, who has served  
23 enough years according to what the Legislature  
24 said and please grant him a parole date, or if  
25 you find him suitable set a term for him today.  
26 Thank you.

27           PRESIDING COMMISSIONER BIGGERS: Thank

81

1 you, very much, Ms. Rutledge. Now Mr. Plaza you  
2 have the opportunity to tell this Panel why you  
3 feel that you are suitable for parole.

4 INMATE PLAZA: Sorry. A little nervous.  
5 I believe first of all if I could I'd like to --  
6 I'd like to explain a couple of things. One  
7 thing that I have heard a lot of times being  
8 incarcerated that I didn't know 16 years ago --  
9 I had no knowledge of what personal disorders  
10 were because I was so caught up in my drug and  
11 alcohol habit. I didn't look at -- I didn't  
12 look at things as I should have, not normally  
13 anyways. I realize that being anti social at  
14 the time, you know, had me do things that any  
15 normal person would not do. It wasn't due --  
16 I'm not making excuses. I never say that, you  
17 know, some people do -- but I don't say that the  
18 drugs or the alcohol committed the crime. I  
19 understand that I was the one that made the  
20 choice, and I take full responsibility for that.  
21 But I do -- I also want to say that being anti  
22 social, you know, my problems started at about  
23 15 years old, basically. Fifteen years old, I  
24 hit high school started hanging out with the  
25 wrong crowd. Running with the guys, you know,  
26 that I shouldn't have -- had no business hanging  
27 around. But because they all were in the same



1 predicament, whether they were raised by a  
2 single parent or, you know, were also seeking  
3 some kind of, you know, some kind of family.  
4 Some kind of acceptance. And, being that I was  
5 in that same category looking for acceptance,  
6 like I said earlier, I chose to hang around with  
7 people that had a lot of similarities to me.  
8 And because I chose to hang around with those  
9 people I was around things that, you know, I  
10 shouldn't have been around and drugs and alcohol  
11 became my biggest problem. And I understand  
12 that, you know, again a personal disorder border  
13 line, I crossed a lot of border lines but laws  
14 specifically because by purchasing drugs and  
15 alcohol I was naturally breaking laws, you know,  
16 to purchase these products. Again, you know,  
17 narcissistic because I hung around with this  
18 group I kind of got the feeling that I was, you  
19 know, I should have respect or I should have  
20 things coming just because of who I was or who I  
21 hung around with. But upon coming to prison I  
22 can honestly say that the very first thing that  
23 helped me out was being incarcerated, of course,  
24 but going to AA. When I first went to AA I  
25 started realizing when I got to Step Four  
26 especially because you have to take that moral  
27 inventory, I started realizing and seeing

1 things. And the sponsor at that time he taught  
2 us to look at things and to -- and to just, you  
3 know, call them what they are. If you're lying,  
4 then you're a liar. If you're stealing, then  
5 you're a thief. If you're doing -- whatever the  
6 circumstances might be. And so I did that, and  
7 I started looking at things and, you know, to be  
8 honest initially it was ugly and I -- some  
9 things you know you kinda don't want to accept  
10 because you want to think that, you know, you're  
11 not like that or you're better than that. I  
12 never wanted to accept to that, you know, that I  
13 had these problems, you know, because I thought,  
14 you know, hey I'm normal. There's nothing  
15 different about me than the next guy. But upon  
16 learning these things I started working on  
17 making that change, changing my life. AA led me  
18 to church. When I started going to church again  
19 that was a big help because the church started  
20 helping me again look at myself, and get an  
21 understanding. And, once I started to get that  
22 understanding I really began to make more  
23 change. And, as time went on -- I mean, I  
24 always got something out of the self-help  
25 groups. Every group had at least something to  
26 offer but as I went along I started learning, I  
27 started getting the insight of my crime of

1 myself and I started realizing as well the  
2 severity of my crime, you know, that it wasn't  
3 just, you know, something that happened, you  
4 know. It was way deeper than that. So, I  
5 started looking into these things. Upon looking  
6 into these things and really getting that  
7 understanding, Impact -- like I said earlier,  
8 the Impact was a great help to me. I started  
9 learning different things from Impact as well.  
10 Started getting a different perspective and  
11 getting more of a panoramic vision on life, you  
12 know, on everything that I'm involved in. What  
13 I do. It was a Captain who -- Captain Gega  
14 (phonetic), Unit Three Captain, she was the one  
15 who kind of, you know, gave me that opportunity  
16 as well to get into doing more than just the  
17 average guy that was in there. So, I started,  
18 you know, working with her. Working with her  
19 you see the problems in the paperwork. I was  
20 able when that riot broke out in the wing  
21 between the Nationals and the Bull Dogs, which  
22 is two different groups that are here -- even  
23 though I'm not a part of any of the groups I  
24 have a rapport because now people see me and  
25 they know that I'm the opposite of them. I'm  
26 constantly talking to people, trying to  
27 encourage them to be their own man, to make

1 their decisions, to not follow that peer  
2 pressure and the crowd and do those things. And  
3 so they -- they tell me, you know, they see  
4 integrity in me, and it's something that you  
5 don't see in just everybody or anybody. So  
6 having that has helped me a lot. I believe that  
7 through them programs -- you also -- there was  
8 another letter in the packet. It was from  
9 Victory Out Reach out of here in San Jose. They  
10 have a program also. Not just here in San Jose.  
11 They have it in every County. It doesn't  
12 matter. I talked to Ed Morales who's the  
13 Director there. He says it doesn't matter what  
14 County you go to, they have a program that's  
15 called Cease Fire and because of the education  
16 and the insight that I've gotten through the  
17 program he's told me, wherever you go, I want to  
18 use you because you can get to these people.  
19 You can reach out and talk to these people so  
20 that there's never -- again there doesn't have  
21 to be another Mr. Littlebull. There doesn't  
22 have to be somebody in my position, you know.  
23 So that's what I look to do now, is to stop them  
24 kind of things. Deter people, you know, doing  
25 them kind of things. I know it's in the  
26 Appellate version as well, even though no one  
27 read it here today, but you know that upon my

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1 reaching the County Jail, you know, I was  
2 approached. Because, see, I was not<sup>x</sup>-- I was  
3 not an active member but I hung around with the  
4 crowd. So I was approached in the County Jail  
5 and, you know, was threatened. That was the  
6 County Jail. Upon reaching prison -- and it  
7 actually turned out to be one of the biggest  
8 favors they could do for me. I was approached  
9 in prison, and they told me, you're on your own.  
10 You don't run with us. We don't claim you. You  
11 don't claim us. Which was like I said, the  
12 biggest favor they could have done for me at  
13 that time. Because that was -- that was what  
14 got me started as well to make that change and  
15 not continue to try to pursue that road that I  
16 was on prior to that point. So, being that I  
17 was excommunicated -- it was good for me,  
18 because then, even though they told me you're on  
19 your own, and I know that in here not just  
20 anybody can be out on their own. You usually  
21 have to find a crowd or find a race or, you  
22 know, someone. You usually gotta, you know,  
23 hang out with somebody. But I was able to do  
24 it. I was able to go on my own. And I started  
25 to take the attitude too that, you know what,  
26 I'm not gonna pay attention what other people  
27 say. I don't care what, you know, what they say

1 or do because I want to be that person that I  
2 know I can be. And even my own mother told me  
3 that one time on visit six, seven years ago.  
4 She said, you know, you've turned into that man  
5 that I always wanted you to grow up to be, you  
6 know. I understand that today I have an  
7 opportunity to get out, come before you, and to  
8 put all these things in practice. As my  
9 attorney said, not just talk the talk but walk  
10 the walk. And, I have things in place. I have  
11 things, you know, set up where I can go and be a  
12 part of society and I can go and make a  
13 difference and hopefully like I said before get  
14 at, you know, not just youngsters, anybody.  
15 Whether they're young or old, and be able to  
16 share with them and explain to them, you know,  
17 educate them. You know, I'm all for  
18 intervention. Intervention is good. But,  
19 prevention is even better. You know,  
20 intervention the problem's already there. But  
21 prevention, the problems' not there yet or  
22 hasn't got to that point where, you know, it's  
23 too the extreme. So, I hope that today, you  
24 know, the Panel would surely take a look and  
25 consider me because I believe with the things  
26 that I have, with all the support system that I  
27 have, with the plans and the goals that I have

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1 -- and it's not something that I did all my  
2 life, but I do have plans and goals. And I  
3 believe those plans and goals that I have now  
4 are going to be the things that help me to  
5 succeed, and I have no problem with any kind of  
6 parole to the extreme conditions. Testing, you  
7 know. Whatever I need to do. I have no problem  
8 whatsoever. And so I -- I just ask if, you  
9 know, you Panel members today would consider me  
10 as being suitable and I thank you and I do want  
11 also would like to say that this packet here was  
12 not a personal attack on you. It was not meant  
13 to be, you know, in any way personal. I do have  
14 to say it's my first one and being unfamiliar I  
15 did allow other people to kind of give me a  
16 little helping hand, and if there was anything  
17 that, you know, was not necessary or was an  
18 overkill it was not done intentionally and once  
19 my final statement because I want to make sure  
20 that you know is that, again, I take full  
21 responsibility for the taking of the life of Mr.  
22 Littlebull and I thank you.

23           PRESIDING COMMISSIONER BIGGERS: We will  
24 recess at this point.

25                           R E C E S S

26                           --oOo--

27

CALIFORNIA BOARD OF PAROLE HEARINGS

D E C I S I O N

DEPUTY COMMISSIONER MEJIA: We're back on record for our decision -- on tape.

PRESIDING COMMISSIONER BIGGERS: Let the record reflect that everyone that was in the room prior to us recessing for deliberations are now back in the room. The Panel has reviewed all information received from the public and relied on the following circumstances in concluding the prisoner is not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. The offense was carried out in an especially cruel and callous manner in that this was a drive-by shooting where a Mr. Patrick Littlebull, the victim, was shot and killed as a retaliatory type crime based on what was in the Appellate Decision. This offense was carried out in a calculated manner, and I'll read from the -- that the -- decision that Mr. Plaza was

-- driving slowly with his lights out thus eliminating attention to his approaching car was strong evidence of prior planning. The



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1 approach without lights is  
2 factually similar to lying in  
3 waiting and illustrates a  
4 deliberate plan by the occupants  
5 of the car to approach to victim  
6 unnoticed so that the killing  
7 could be accomplished from a  
8 position of surprise and  
9 advantage."

10 The motive for the crime was very trivial in  
11 that it was a gang related shooting, and these  
12 conclusions was drawn from the Statement of  
13 Facts from the Appellate Decision. You have no  
14 -- your criminal record was of no significance  
15 to us because you had very little if any. You  
16 have programmed extremely well. You should be  
17 commended for no disciplinary actions. Your  
18 psychiatric evaluation was favorable. Your  
19 parole plans were favorable. Your 3042 response  
20 from the District Attorney was opposed to your  
21 -- a finding of parole suitability, and you have  
22 numerous letters of support. The Panel  
23 struggled with this for quite some time,  
24 basically because of a couple things that I will  
25 go over with you right now. First of all, the  
26 signs of remorse for the victim. You say you  
27 JESUS PLAZA H-12371 DECISION PAGE 2 05/01/06

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1 take full responsibility for the crime, but when  
2 Deputy Commissioner Mejia started talking to you  
3 about the crime and what you took from the  
4 victim, you went off and you started talking  
5 about collateral effects of the families and all  
6 the others but you never mentioned about the  
7 victim. You need to -- and with that, that  
8 gives us an indication that you really haven't  
9 taken -- you're minimizing your involvement in  
10 the crime by not knowing exactly what happened  
11 to the victim. You need to get that out. We  
12 -- as I said, we talked about it for quite some  
13 time because we just feel that you're not --  
14 it's -- you're just taking responsibility for  
15 the crime is superficial, and we need to get  
16 genuine remorse. So, the big thing is remorse  
17 for the victim. We also feel that your gains  
18 are recent, as illustrated by when we talked to  
19 your earlier and the District Attorney even  
20 brought this up and I went back and went over  
21 the Appellate Decision as well as the sentencing  
22 thing for -- you indicated initially that you  
23 were not involved with the shooting. Then you  
24 say you were when they told you about your  
25 vehicle, and that's when you mentioned about the  
26 gun. They found the gun within (indiscernible).  
27 JESUS PLAZA H-12371 DECISION PAGE 3 05/01/06

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1 We note that you are doing extremely well  
2 programming, but we just feel that you need to  
3 have more time. You should be commended for  
4 your program that you have been involved with,  
5 your Vocational Dry Cleaning, your Air  
6 Conditioner Refrigerator, AA and NA, and the  
7 Impact and Anger Management courses that you are  
8 working with right now. In a separate decision,  
9 the hearing Panel thought it's not reasonable to  
10 expect that parole will be granted in a hearing  
11 in the following two years. Again, the crime  
12 itself was just especially cruel and callous in  
13 that you (indiscernible) on an individual who  
14 was vulnerable. He didn't have a weapon; he's  
15 walking down the street, and you and your  
16 co-defendant shot him. And, we realize that you  
17 only drive the vehicle, but the mere fact that  
18 you were there with your lights off is a strong  
19 indication that you knew what was going to take  
20 place. The -- and the motive for the crime as  
21 we talked about earlier, was very trivial in  
22 that this was a gang retaliation. All  
23 indications point to this was a gang  
24 retaliation. Once you've become -- once you've  
25 come to grips with what transpired, allow  
26 yourself to not minimize the involvement of what  
27 JESUS PLAZA H-12371 DECISION PAGE 4 05/01/06

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1 think you'll be okay, because you're definitely  
2 on the road to getting a date. But you've got  
3 to take that remorse to the victim, you can't  
4 generalize. You said I take full  
5 responsibility. You got to take it from not the  
6 family. You've got to take responsibility for  
7 Patrick.

8 INMATE PLAZA: I understand.

9 PRESIDING COMMISSIONER BIGGERS: Mr.  
10 Mejia?

11 DEPUTY COMMISSIONER MEJIA: No further  
12 comments from me.

13 PRESIDING COMMISSIONER BIGGERS: Okay.  
14 Good luck to you. That concludes the hearing.  
15 The time is now ten minutes to --

16

17

18

19

20

21

22

23 PAROLE DENIED TWO YEARS

AUG 29 2006

24 THIS DECISION WILL BE FINAL ON: \_\_\_\_\_

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT  
26 DATE, THE DECISION IS MODIFIED.

27 JESUS PLAZA H-12371 DECISION PAGE 5 05/01/06


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CERTIFICATE AND  
DECLARATION OF TRANSCRIBER

I, RUBY M. DOUGHERTY, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total TWO in number and cover a total of pages numbered 1 - 93, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the INITIAL PAROLE CONSIDERATION HEARING for JESUS PLAZA, CDC NO. H-12371, on MAY 1, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated MAY 30, 2006, at Sacramento, California.

  
RUBY M. DOUGHERTY  
TRANSCRIBER  
PETERS SHORTHAND REPORTING

---

# EXHIBIT B

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LIFE PRISONER EVALUATION REPORT  
INITIAL PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR  
ADDENDUM

PLAZA, JESUS

H12371

This addendum is being submitted as a correction to some inaccuracies that were found in the Board Report for Plaza's Initial Parole Consideration Hearing.

On Page 2 of the report under Aggravating Circumstances: it says use of weapon: Gun, 9mm. That information was taken from the POR pg. 2. In the Court Transcripts for the Court of Appeal of the State of California Second Appellate District Division Two Page 3, it states that a .38 revolver was found in a hollow space underneath the dashboard of the suspects. A ballistic test indicated that an expended bullet found at the scene on Loveland Street was fired from the gun that was recovered.

Under the Preconviction Factors: C. Personal Factors: The Board Report states that Plaza was born 2/7/65 to Caroline and Jessie Plaza. This should be corrected as follows: Plaza was born 3/7/65 to Caroline and Jesus Plaza. Plaza also said that his marriage took place on 5/12/84 and not 5/7/84.

Postconviction Factors: Should read as follows; Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary, pre-voc. and Computer Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

**Inmate Copy**

Sent to Inmate on 11/29/05

LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
2006 CALENDAR

2

T. Verdesoto 11-16-05  
T. Verdesoto Date  
Correctional Counselor I

D. Carnazzo CII 11-16-05  
D. Carnazzo Date  
Correctional Counselor II

I. Guerra FC(R) 11-16-05  
I. Guerra Date  
Facility Captain

D. S. Levorse CAPR 11-16-05  
D. S. Levorse Date  
Classification and Parole Representative



LIFE PRISONER EVALUATION REPORT  
INITIAL PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR

PLAZA, JESUS

H12371

I. COMMITMENT FACTORS:

- A. Life Crime: Murder 1<sup>st</sup>, (PC 187), Los Angeles County Case #VA004108..  
Sentenced: 25 years to Life. Weapon: Gun. MEPD: 1/25/07. Received in  
CDC: October 9, 1991. Victim: Patrick Littlebull, age: unknown.

1. Summary of Crime: The defendant, Jesus Plaza, and another subject were seen driving a vehicle near the victim, Patrick Littlebull. A witness heard a series of shots and saw the victim Patrick collapse onto the floor. Officers arrived at the scene of a residential street in Bell Gardens and found Patrick lying on the floor in a puddle of blood. Paramedics arrived shortly after and pronounced him dead at the scene. Victim's autopsy indicated that his death resulted from a single gunshot wound to the right lateral side of his chest.

Several witnesses gave officers information about the suspects vehicle, and approximately 1 hour later, police saw the vehicle and detained the defendant along with a second suspect. Officers observed a .9mm casing on the floor board of the vehicle in front of the passenger. Both Plaza and his companion were arrested and later evaluated for evidence of gunshot residue. (Source: POR pg 2, 3 &4).

2. Prisoner's Version: First and foremost to each family member and friend of Mr. Littlebull. Knowing that there are no special, no specific, nor any amount of words that could right the wrong I did. Nor can any words equal or be greater than the crime in a good way, I wholeheartedly apologize yet due to multiple counseling programs and self help programs that I have seeked out throughout my incarceration. I've gained knowledge and an understanding of my crime and true remorse, and so I take full responsibility for my choices and actions in the commitment of this crime and also stipulate to the P.O.R. as being true and accurate.

3. Aggravating/Mitigating Circumstances:

- a. Aggravating Factors:

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PLAZA, JESUS

H12371

CTF-SOLEDAD

DEC/2005

SENT TO I/M ON 9/22/05

LIFE PRISONER EVALUATION REPORT  
 PAROLE CONSIDERATION HEARING  
 DECEMBER 2005 CALENDAR

2

- ❖ Victim was particularly vulnerable.
- ❖ Prisoner had opportunity to cease but continued with crime.
- ❖ Murder was senseless and served no purpose in completing the crime.
- ❖ Use of weapon: Gun, .9mm.
- ❖ Nature of crime exhibited viciousness, cruelty or callousness.

b. Mitigating Factors:

- ❖ Prisoner has minimal or no history of criminal behavior.

B. Multiple Crime(s): N/A.

1. Summary of Crime: NA.
2. Prisoner's Version: NA

II. PRECONVICTION FACTORS:

A. Juvenile Record: None noted in Central File.

B. Adult Convictions and Arrests:

- ❖ 07/16/83 PC 594 (a) Vandalism.
- ❖ 09/17/83 PC 187 Attempted Murder (no disposition).
- ❖ 04/02/84 PC 594 Malicious Mischief/Vandalism.

C. Personal Factors: Plaza was born 2/7/65 to Caroline and Jessie Plaza. He has four sisters and a brother. Plaza graduated from high school 5/17/83 from Vail High in Montebello, CA, and then married Guadalupe Falcon on 5/7/84 and they have three children, Ramona, and Justina, and Izaiah.

III. POSTCONVICTION FACTORS:

A. Special Programming/Accommodations: N/A.

B. Custody History: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92 Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary and pre-voc. Plaza was again transferred to CSP LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the dry cleaning and voc electrical shop. On 12/16/97 he was transferred to Avenal, and on 3/13/98 he was transferred to

LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR

3

CTF Soledad. While at CTF, Plaza was assigned to PIA Textiles. On 12/31/98 Plaza went to CMC-E as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF, Plaza has been assigned as a porter, a dental assistant and has worked in the culinary.

- C. Therapy and Self-Help Activities: Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir. Refer to Post Conviction Progress Reports for more details.
- D. Disciplinary History: Plaza has remained disciplinary free throughout his incarceration.
- E. Other: N/A.

IV. FUTURE PLANS:

- A. Residence: Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr. Simi Valley, California 93063. His phone number is (805) 581-6323
- B. Employment: Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone #(805) 578-7303.
- C. Assessment: In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing.

V. USINS STATUS: NA.VI. SUMMARY:

- A. Prior to release the prisoner could benefit from:
  - 1. Continuing to be disciplinary free.
  - 2. Participation in self-help and therapy programs.
  - 3. Upgrading vocationally and educationally.

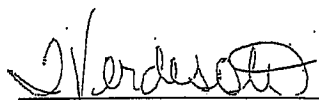
LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR

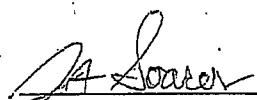
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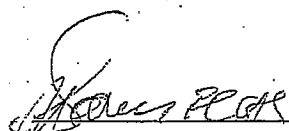
- B. This report is based upon an interview with the prisoner on 9/1/05 lasting approximately 1 hour(s) and a complete review of the Central File lasting 3 hours(s).
- C. Per the Olson Decision, Plaza was afforded an opportunity to examine his Central File on 9/1/05, Plaza did examine his Central File. (Refer to CDC 128-B dated 9/1/05 in the General Chrono Section of the Central File.)
- D. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

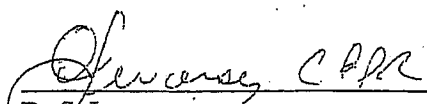
LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
DECEMBER 2005 CALENDAR

5

 9-20-05  
T. Verdesoto Date  
Correctional Counselor I

 9/21/05  
J. Soares Date  
Correctional Counselor II

 9/21/05  
I. Guerra Date  
Facility Captain

 CARR 9-22-05  
D. S. Levorse Date  
Classification and Parole Representative

# EXHIBIT C

1/14 copy

**MENTAL HEALTH EVALUATION FOR  
THE BOARD OF PRISON HEARINGS  
May, 2006 Lifer Calendar**

**CORRECTIONAL TRAINING FACILITY SOLEDAD  
APRIL, 2006**

**NAME:** PLAZA, JESUS  
**CDC#:** H-12371  
**DOB:** 3/7/65  
**OFFENSE:** PC 187 MURDER, FIRST DEGREE  
**DATE OF OFFENSE:** 5/26/90  
**SENTENCE:** 25 YEARS TO LIFE  
**EVALUATION DATE:** 4/16/06  
**MEPD:** 1/25/07

**I. IDENTIFYING INFORMATION:**

Mr. Jesus Plaza is a 41 year old, first term, Hispanic, married male from Los Angeles County. He is an active Christian. He has served 16 years on his sentence.

**SOURCES OF INFORMATION:**

This report is based upon a single 90 minute interview, plus review of the central and medical files.

**II. DEVELOPMENTAL HISTORY:**

When questioned about prenatal and perinatal issues, he stated that he was born at General Hospital, and his birth was normal. He progressed through developmental milestones in a normal manner. He is the second of four children. There is no history of cruelty to animals, enuresis or arson. He was never abused as a child, either sexually, physically or emotionally. He did have accidents as a child. One time he fell off of a pipe, injuring his leg on a fish tank. At the age of eleven he was involved in a car accident and injured his left knee which had recently been fixed through surgery.

PLAZA, JESUS  
H-12371  
4/15/06  
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**III. EDUCATION:**

He attended public school and graduated from Vail High School in Montebello. He was never suspended or expelled. He has continued his education by attending college classes. He is attending Coastline Junior College at this time by correspondence, working towards his AA degree. He has 15 more credits until he gets his AA degree.

**IV. FAMILY HISTORY:**

Mr. Plaza's biological parents separated when he was about four years of age. He was raised primarily by his mother and maternal grandparents. His mother is currently employed by St. Francis Hospital, and his father worked for years as a mechanic and an auto body repairman. He is now 66 years of age and has retired. He has one older sister that works for General Electric in Pennsylvania, a younger sister who is mainly retarded who lives with his mother, and one younger brother who is married and working as a sales manager of a container corporation. There is no family history of mental illness, of drug abuse, of alcoholism, or of legal problems.

**V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:**

Mr. Plaza is heterosexual. There is no history of high risk behavior or of problems.

**VI. MARITAL HISTORY:**

He has been married one time. He was married on 5/12/84 to Guadalupe who lives in Whittier. There are three children. Ramona, 21 years of age, is working as a R.N. at St. Francis Hospital. Justina is 19 and is attending Cerritos College. Isaiah is 10 years of age. His marriage is intact, and his wife is supportive. He indicated that he has a very close relationship with his wife and children. They keep in close contact by correspondence, phone calls and several visits a year.

**VII. MILITARY HISTORY:**

There is no military history.



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**VIII. EMPLOYMENT/INCOME HISTORY:**

Right after he graduated from high school at the age of 18, he went to work for Century Plastics, where he worked for 4 ½ years. This company made fiberglass products for airplanes. He was the lead man there. In 1987, he went next door to work for Century Arrow doing the same kind of work. These two companies are owned by the same people. One year before the commitment offense, he began working for an asbestos abatement company as a laborer.

In the institution, he has obtained several trades. He has completed Vocational Dry Cleaning, Vocational Air Conditioning, Refrigeration and Heating, Vocational Meat Cutter, and he also has completed a correspondence course as a home inspector. Currently he is working as a meat cutter in culinary.

**IX. SUBSTANCE ABUSE HISTORY:**

Mr. Plaza stated that he did have an alcohol and drug problem from the ages of 15 to 25. He would drink alcohol primarily on weekends, because he had to work during the week. He smoked some marijuana. He also snorted cocaine about three times a week at the age of 16. At the age of 20, he began using cocaine every other day. He attends Alcoholics Anonymous and Narcotics Anonymous. He attends as often as he can, and he has been going steadily to these programs for the last 13 or 14 years.

**X. PSYCHIATRIC AND MEDICAL HISTORY:**

There is no psychiatric history. There is no history of serious hospitalizations, other than his surgery on his left knee. There is no history of serious accidents or of head injuries or seizures. His health is good.

**XI. PLANS IF GRANTED RELEASE:**

Mr. Plaza plans to return to his old employer in Simi Valley. He also will be able to live with his brother in that area. He will be compliant with all parole rules and regulations. He does have strong family support in the community. The prognosis for successful community living in this case is excellent.

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### CLINICAL ASSESSMENT

#### XII. CURRENT MENTAL STATUS/TREATMENT NEEDS

Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts degree. His grades are very good. Also, he has obtained a certificate as a home inspector from a professional career development institute in Georgia by correspondence. In addition, he has completed several courses towards self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

#### CURRENT DIAGNOSTIC IMPRESSION

Axis I: Drug and alcohol use by history  
Axis II: No personality disorder  
Axis III: No physical disorder  
Axis IV: Life term incarceration  
Axis V: Current GAF: 95

#### XIII. REVIEW OF LIFE CRIME

Mr. Plaza discussed the details of the commitment offense. He accepts full responsibility for this offense. He feels very badly that the victim died. He is fully aware that the victim's family has suffered greatly at the loss of their father and husband. The fact that gunshots were fired was a total surprise to Mr. Plaza. He had no idea that this was going to happen, and there certainly was no intent on his part. He is very aware of the repercussions of this offense. Even today his wife, children and mother are being watched and approached about this situation

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by gang members. He is very concerned about their welfare. All of these situations are a result of the commitment offense. Needless to say Mr. Plaza feels deep feelings of sorrow, remorse and grief over this situation.

At the time of the commitment offense, Mr. Plaza had been using cocaine and alcohol. His judgment at that time was impaired by his use of these substances. At the time of the commitment offense he was actually under the influence. However, after 16 years there is no evidence of any involvement in drugs or in alcohol. He has continuously attended Alcoholics Anonymous and Narcotics Anonymous over the years. Since he has become Christian, he has strong values against the use of drugs or alcohol at this time in his life. He is certainly familiar with the destructive effects of this involvement. As a result, he has determined to never become involved in drugs or alcohol again in his life. This information is of historical importance only because it is not currently a diagnostic problem.

#### XIV. ASSESSMENT OF DANGEROUSNESS

- A. In considering potential for dangerous behavior in the institution, Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time at this prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. Due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

- B. In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-

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H-12371  
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Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

- C. At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this is no longer an issue. Therefore, there are no significant risk factors in this case.

**XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS**

There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon his release. He has very strong family support in the community. All of these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All of these factors indicate that his prognosis for successful adjustment in the community is excellent.

*M. Macomber, Ph.D.*

M. Macomber, Ph.D.  
Correctional Psychologist  
Correctional Training Facility, Soledad

*B. ZIKA, Ph.D.*

B. ZIKA, Ph.D.  
Senior Psychologist  
Correctional Training Facility, Soledad

D: 4/15/06  
T: 4/19/06

# EXHIBIT D

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DEPT 100

Date: SEPTEMBER 6, 2007

Honorable: STEVEN R. VAN SICKLEN  
NONEJudge JOSEPH M. PULIDO  
Bailiff NONEDeputy Clerk  
Reporter

(Parties and Counsel checked if present)

BH004502

In re,  
JESSE PLAZA,  
Petitioner,  
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus filed on February 23, 2007 by the Petitioner. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the determination that the Petitioner presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4<sup>th</sup> 616, 667.

The Petitioner was received in the Department of Corrections on October 9, 1991 after a conviction for murder in the first degree with a firearm. He was sentenced to 25 years to life. His minimum parole eligibility date was January 25, 2007. The record reflects that on May 26, 1990, the Petitioner was driving with fellow gang members on a street known to be the territory of a rival gang. The Petitioner drove slowly, with the headlights turned off, as he approached the victim, a rival gang member, who was standing in front of a house. As the Petitioner drove by, his accomplice fired several shots at the victim. The victim was shot and killed. The Petitioner then sped away. A witness heard the gunshots and saw the Petitioner's car speed away called the police and the Petitioner and his accomplices were pulled over and arrested.

The Board found the Petitioner unsuitable for parole after his first parole consideration hearing held on August 29, 2006. The Petitioner was denied parole for two years. The Board concluded that the Petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision primarily upon his commitment offense.

The Court finds that there is some evidence to support the Board's finding that the Petitioner's offense was carried out in a calculated and dispassionate manner. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The Petitioner drove slowly with his headlights turned off, so as to avoid detection as he approached the victim. This demonstrates that the shooting was planned and that the Petitioner was deliberately driving toward the victim for that purpose. Additionally, the Petitioner's accomplice was armed with a gun for the purpose of shooting the victim. Regardless of whether the Petitioner himself shot the victim, he was acting in concert with his accomplice and, therefore, the shooting is imputed to him.



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DEPT 100

Date: SEPTEMBER 6, 2007

Honorable: STEVEN R. VAN SICKLEN

NONE

Judge

JOSEPH M. PULIDO

Bailiff

NONE

Deputy Clerk

Reporter

(Parties and Counsel checked if present)

BH004502

In re,

JESSE PLAZA,

Petitioner,

On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

The Court also finds that there is some evidence to support the Board's finding that the Petitioner's motive was very trivial in relation to the offense. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The Petitioner and his accomplice shot the victim merely because he was a rival gang member. There is no evidence that the victim had threatened or harmed the Petitioner in any way. Gang rivalry is a very trivial motive for killing a man.

Additionally, the Court finds that the Board did not err in denying the Petitioner parole for a period of two years. The Board must articulate reasons that justify a postponement, but those reasons need not be completely different from those justifying the denial of parole. See *In re Jackson* (1985) 39 Cal.3d 464, 479. The Board indicated that the Petitioner was denied parole for two years because his commitment offense was calculated and dispassionate and against a particularly vulnerable victim; his motive was trivial; and he failed to show adequate remorse for the victim. These reasons were sufficient to justify a two-year denial.

Accordingly, the petition is denied.

The court order is signed and filed this date. The clerk is directed to give notice.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Jesse Plaza  
H-12371  
Correctional Training Facility  
P.O. Box 689  
Soledad, California 93960-0689

Department of Justice- State of California  
Office of the Attorney General  
300 South Spring Street  
Los Angeles, California 90013

<b>SUPERIOR COURT OF CALIFORNIA</b> <b>COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp  <b>CONFORMED COPY</b>  SEP 07 2007  <b>LOS ANGELES</b> <b>SUPERIOR COURT</b>  Joseph M. Pulido
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		CASE NUMBER:  BH004502
PLAINTIFF/PETITIONER:  JESSE PLAZA		
<b>CLERK'S CERTIFICATE OF MAILING</b> CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- |  |  |
|--|--|
| <input type="checkbox"/> Order Extending Time            | <input checked="" type="checkbox"/> Order re: Writ of Habeas Corpus                          |
| <input type="checkbox"/> Order to Show Cause             | <input type="checkbox"/> Order   |
| <input type="checkbox"/> Order for Informal Response     | <input type="checkbox"/> Order re:   |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of Petition for Writ of Habeas Corpus for the Attorney General |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

September 7, 2007  
 DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Joseph M. Pulido, Clerk  
 Joseph M. Pulido

Jesse Plaza  
 H-12371  
 Correctional Training Facility  
 P.O. Box 689  
 Soledad, California 93960-0689

Department of Justice- State of California  
 Office of the Attorney General  
 300 South Spring Street  
 Los Angeles, California 90013



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JESSE PLAZA,

On Habeas Corpus.

B202665

(Super. Ct. No. VA004108)

ORDER

THE COURT:

The court has read and considered the petition for writ of habeas corpus filed October 9, 2007. The petition is summarily denied.

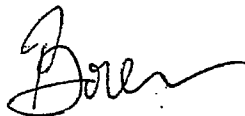
COURT OF APPEAL - SECOND DIST.

**FILED**

NOV 8 - 2007

JOSEPH A. LANE Clerk

J. GUZMAN Deputy Clerk



BOREN, P.J.



ASHMANN-GERST, J.



CHAVEZ, J.

CLERK'S OFFICE  
Court of Appeal  
SECOND APPELLATE DISTRICT  
300 SOUTH SPRING STREET  
SECOND FLOOR - NORTH TOWER  
LOS ANGELES, CA 90013-1204

PRISONER RECEIVED THIS

LETTER ON DATE 11.13.07

do M. D. B. [Signature]



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**EXHIBIT F**

Court of Appeal, Second Appellate District, Div. 2 - No. B202665  
S158421

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re JESSE PLAZA on Habeas Corpus

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The petition for review is denied.

**SUPREME COURT  
FILED**

**JAN 23 2008**

Frederick K. Ohlrich Clerk

Deputy

**GEORGE**

Chief Justice